



COAST ACTION GROUP
P.O. BOX 215
POINT ARENA, CA 95468

Affiliate of Redwood Coast Watersheds Alliance

June 4, 2014

George Gentry, Executive Officer
State Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

Subject: Comment - Rule Making Consistent with the Language of AB 904 – Working Forest Management Plan

Dear Mr. Gentry:

Included below are our current comments regarding specific use related to this rule making process. As indicated by previous letter and a history of Coast Action Group involvement in the development of AB 904 and other Board of Forestry Rule Making and Regional Water Board Rule Making, we have indicated our concerns and positions related to development and adoption of such rules affecting water quality and forest values.

Briefly, our major concerns with the current rulemaking process falls in a limited area of categories – including:

- * Consistency with the wording and intent of the AB 904 Legislation
- * Noticing
- * Erosion Control Inventory and Planning
- * Maintenance and recruitment of Late Seral (old growth) values and inventory
- * Water Quality Considerations (Compliance with Basin Plan)
- * Review Period
- * Clarification of some operational considerations (i.e. Limiting amalgamation of properties).

Consistency with the language and intent of the Legislation:

Note: Language from the legislation included in this document will be indicated so – in italics.

4597.20. The board shall adopt the regulations needed to implement this article by January 1, 2016.

The bill would require the board to adopt regulations needed to implement the above provisions by January 1, 2016. (P.2)

The language and intent in the legislation is clear and uncomplicated. The language in the rule making/regulation shall be consistent with and adequately reflect the plain language of the legislation. Deviation from the legislative language and intent is not acceptable. Any, such deviation in language that is required to be consistent with other State Code or regulation shall be supported by justification and analysis.

This rulemaking is a project under CEQA. Consistency with the legislative language and any alteration of language shall be reviewed for applicability – where the language must address the legislative intent. Rule language must address any issue in a manner equal to or better than the stated language in the legislation.

Current iterations of the rule contain some apparent language changes, differences, that appear to fail to meet the legislative language and/or intent of the legislation. In these comments, we are pointing out the legislative language at issue and expect the Board to make appropriate adjustments – to be consistent with and reflect the legislative language. We are not offering language fix suggestions.

Noticing (and) Review Periods

The bill contains language that indicates noticing and maintenance of web-based documentation of the Plan. Rulemaking language shall indicate that not only the plan should be available on the web – all available documents necessary for accurate review of the plan shall be maintained on the web as part of the Plan.

The board shall adopt regulations regarding the notice of receipt of the proposed working forest management plan. The notice shall be given within two working days following receipt of the proposed management plan and shall be consistent with all applicable laws. The method of notice shall include, but not be limited to, mailed notice and Internet-based notice. The regulations may require the person submitting the working forest management plan to provide to the department a list of the names and addresses of persons to whom the notice is to be mailed.

The department shall provide notice of the filing of working forest management plans, the proposed plans, and working forest harvest notices on its Internet Web site, and to any person who requests, in writing, that notification.

Upon receipt of the proposed working forest management plan, the department shall place the proposed plan, or a true copy of the proposed plan, in a location or on an Internet Web site available for public inspection in the county in which timber operations are proposed under the plan. For the purpose of interdisciplinary review, the department shall also transmit a copy to the Department of Conservation, the Department of Fish and Wildlife, the appropriate California regional water quality control board, the county planning agency, and all other agencies having jurisdiction by law over natural resources affected by the plan. The department shall invite, consider, and respond in writing to comments received from public agencies to which the plan has been transmitted and shall consult with those agencies at their request.

(a) The department shall provide a time period for public comment, starting from the date of the receipt of a working forest management plan, as follows:

(1) Ninety days for a working forest management plan for less than 5,000 acres.

(2) One hundred ten days for a working forest management plan for between 5,000 and 9,999 acres.

(3) One hundred thirty days for a working forest management plan for between 10,000 and 14,999 acres

As noted above, review periods may need to be altered due to Plan changes and late information provided by the timberland owner, or as required by the Review Team – to attain the stated objectives of the Act and Rules. Thus, additional time for responsible agency and public review may be required. This should be considered in the rulemaking .

Erosion Control

(j) “Working forest management plan” means a management plan for working forest timberlands, with objectives of maintaining, restoring, or creating uneven aged managed timber stand conditions, achieving sustained yield, and promoting forestland stewardship that protects watersheds, fisheries and wildlife habitats, and other important values.

The definition, above, indicates language (rule language) that will sufficiently protect water quality values as well as habitat and uneven aged development and recruitment (with late seral implications – see below).

Prior to plan approval:

4597.2. (b) A description of the land on which the plan is proposed to be implemented, including a United States Geological Survey quadrangle map or equivalent indicating the location of all streams, the location of all proposed and existing logging truck roads

This description and mapping should be included as part of Erosion Control Plan (or inventory of roads, erosion sites – ongoing or potential – and schedule for remediation) to be included in the Plan.

As per the following:

(d) A description and discussion of the methods to be used to avoid significant sediment discharge to watercourses from timber operations. This shall include disclosure of active erosion sites from roads, skid trails, crossings, or any other structures or sites that have the potential to discharge sediment attributable to timber operations into waters of the state in an amount deleterious to the beneficial uses of water, an erosion control implementation plan, and a schedule to implement erosion controls that prioritizes major sources of erosion

Maintenance and recruitment of Late Successional (old growth type) values and inventory

Language shall be included to assure maintenance of inventory , protection, and recruitment of late successional forest type:

(g) (1) A description of late succession forest stands in the plan area and how the total acreage of this type of habitat will be maintained across the plan area under a constraint of no net loss. Nothing in this requirement shall be interpreted to preclude active management on any given acre of an approved plan if the management is conducted in a manner that maintains or enhances the overall acreage of late succession forest stands that existed in the plan area upon initial plan approval. An exception to the no net loss con-

straint may be granted in the event of a catastrophic loss due to emergency factors such as wildfire, insect, and disease activity. The description shall include the following:

(A) Retention measures for existing biological legacies such as snags, trees with cavities or basal hollows, and down logs, and address how those legacies shall be managed over time appropriate with the forest type, climate, and landowner's forest fire fuels and wildlife management objectives.

(B) Hardwood tree species and how they will be managed over time.

(2) Late succession forest stand types or strata shall be mapped.

(3) Notwithstanding the definition of late succession forest stands in Section 895.1 of Title 14 of the California Code of Regulations, and for the sole purpose of this article, "late succession forest stands" means stands of dominant and predominant trees that meet the criteria of the California Wildlife Habitat Relationships System class 5D, 5M, or 6 with an open, moderate, or dense canopy closure classification, often with multiple canopy layers, and are at least 10 acres in size. Functional characteristics of late succession forest stands include large decadent trees, snags, and large down logs.

(h) Disclosure of state or federally listed threatened, candidate, endangered, or rare plant or animal species located within the biological assessment area, their status and habitats, take avoidance methodologies, enforceable protection measures for species and habitats, and how forest management will maintain these over time

This is to include protection of other wildlife values (as stated – above – and – below)

(2) (A) For long-term sustained yield projections, pursuant to subdivision (c), that project a reduction in quadratic mean diameter of trees greater than 12 inches in diameter or a reduced level of inventory for a major stand type or for a stand or strata that make up greater than 10 percent and less than 25 percent of the working forest management plan area, an assessment shall be included that does all of the following:

(i) Addresses candidate, threatened, endangered, and sensitive species, and other fish and wildlife species that timber operations could adversely impact by potential changes to habitat.

(ii) Addresses species habitat needs utilizing the "WHR system" described in "A Guide to Wildlife Habitats in California," California Department of Fish and Wildlife, 1988, or comparable typing system.

(iii) Addresses constraints to timber management, the impact of the availability and distribution of habitats on the ownership and within the cumulative impacts assessment area identified in the plan in relation to the harvest schedule, and the impacts of the planned management activities utilizing the existing habitat as the baseline for comparison.

(iv) Discusses and includes feasible measures planned to avoid or mitigate potentially significant adverse impacts on fish or wildlife, which can include, but is not limited to, recruitment or retention of large down logs greater than 16 inches in diameter and 20 feet in length, retention of trees with structural features such as basal hollows, cavities, large limbs, or broken tops, retention of hardwoods, and retention or recruitment of snags greater than 24 inches in diameter and 16 feet in height.

Other Water Quality Considerations (Compliance with Basin Plan)

Review Period

Clarification of the review period(s) and the opportunity for public participation is needed

The bill would require the department to provide a public comment period of at least 90 days from the date of the receipt of the plan, as specified.

These are very large scale and detailed plans – requiring significant and detailed review and reporting by the land owner and participating agencies. The current language needs to address the issue of additional time need

by agencies to obtain required information and for the public to have sufficient time to obtain an review that information.

Additionally, if the plan changes in process or is altered by Second Review recommendations, the public and participating agencies need additional time for review.

The language for the 5 year interdisciplinary review shall contain opportunity for public comment on such review. 4597.12 (c)

Clarification of Operational Considerations

There is concern (where clarification is needed in the rules) that there will be attempts to amalgamate (combine) properties to qualify these properties, under this act as a Working Forest Management Plan.

Such amalgamation of combining of properties would provide numerous review and management problems – with varying and different – stand types, strata, management goals, erosion problems, ECPs, and other requirements. Allowing such combinations of different ownerships (under one plan) would make review and management of the Working Forest Management Plan impossible for responsible agencies review and monitor – and , thus, defeats the intent of the legislation.

Language in the bill indicates one owner/operator

The bill would authorize a person who intends to become a working forest landowner, as defined, to file a working forest management plan with the department, with the long-term objective of an uneven aged timber stand and sustained yield through the implementation of the plan

- (i) *“Working forest landowner” means an owner of timberland with less than 15,000 acres who has an approved working forest management plan and is not primarily engaged in the manufacture of forest products.*

Other Considerations

Carbon Sequestration -

(5) To ensure long-term benefits such as added carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, aesthetics, and the maintenance of ecosystem processes and services, the working forest management plans shall comply with rigorous timber inventory standards that are subject to periodic review and verification

The above language suggests stringent inventory review that maintains forest values (species, water quality, old growth) – and – additionally assures accrual of carbon. Rule language should reflect this.

Amendments

Amendments shall comply with existing rules and applicable codes (including the regional Basin Plan) at the time of amendment:

4597.7. The working forest landowner may submit a proposed amendment to the approved plan and shall not take any action that substantially deviates, as defined by the board, from the approved plan until the

amendment has been filed with the director and the director has determined, after completion of the interagency review and public comment period, either of the following:

(a) The amendment is in compliance with the current rules and regulations of the board and the provisions of this chapter.

(b) The amendment is in compliance with the rules and regulations of the board and the provisions of this chapter that were in effect at the time the working forest management plan was approved. The director may only make this determination if the registered professional forester explains, justifies, and certifies both of the following:

(1) The adherence to new or modified rules and regulations of the board would cause unreasonable additional expense to the working forest landowner.

(2) Compliance with the rules and regulations of the board and the provisions of this chapter that were in effect at the time the working forest management plan was approved will not result in any significant degradation to the beneficial uses of water, soil stability, forest productivity, or wildlife

Growth and Yield Targets

The language in the legislation is very clear regarding criteria used to establish growth and yield targets.

The language in the rules must adequately reflect the legislative language and intent.

Compliance with State Code

Rulemaking shall comply with the following:

(b) This article shall be implemented in a manner that complies with the applicable provisions of this chapter and other laws, including, but not limited to, the Timberland Productivity Act of 1982 (Chapter 6.7 (commencing with Section 51100) of Division 1 of Title 5 of the Government Code), the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), the Porter Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code), and the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of the Fish and Game Code).

Rulemaking shall reflect and be consistent with language and intent of the legislation (AB – 904)

This includes Cal Water Code (Porter-Cologne) and the regional Basin Plans. Erosion control planning that does not consider potential erosion sources is not consistent with the Basin Plan. Rulemaking that does not consider Regional Water Board Temperature Policy is not consistent with the Basin Plan.

All provisions of the section 4597.11 will be clearly stated in enforceable language.

Sincerely,

Alan Levine, for Coast Action Group



COAST ACTION GROUP
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Affiliate of Redwood Coast Watersheds Alliance

July 17, 2014

George Gentry, Executive Officer
Management Committee
State Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

Subject: Additional Comments Comment - Rule Making Consistent with the Language of AB 904
– Working Forest Management Plan

Dear Mr. Gentry and Management Committee Members:

The most recent DRAFT of the proposed language for the rules implementing AB 904, Working Forest Management Plan, have made significant improvement in reflecting the intent of AB 904 and the mandate of the legislation to be consistent with all California Code.

However, there are still some outstanding issues which that must be addressed in this rule making process. This letter speaks to the need to include assessment and inventory of potential sediment sources (as proposed by the Regional Board and required by Cal Water Code and the Basin Plan for the North Coast). It appears the committee has issue determining necessity for inclusion of language requiring assessment and inventorying (including prioritizing remediation of sediment control actions necessary to protect beneficial uses) potential sediment sources as part of the sediment control plan for a Working Forest Management Plan. Please refer to Coast Action Groups previous comments (June 4, 2014).

The language of AB 904 is based on the concept of permitting a long term forest stewardship document that is designed to not only protect current resources – were the plan must assess and recover forest productive resources – including water quality and wildlife values. The language in the bill is very clear on this subject.

The following includes a discussion of the logic, benefits, and requirement(s) (under Cal Code and the legislative intent) to include such language:

Erosion Control

First it must be understood that a source that are actively emitting sediment (to high quality waters or waters that are listed as Impaired – California’s list of Water Quality Limited Segments) is a violation of the Basin Plan (and Cal Water Code). And, in fact, such ongoing violations are subject to Notice of Violation (and penalty – Administrative Civil Liability). Additionally; delivery of such pollutants to surface waters is a violation of the Forest Practice Rules (Act – no plan may be approved that is in violation of the applicable water quality control plan) . The Basin Plan and Cal Water Code call for control of threats to water quality (before they become actual violations). Under the Basin Plan and Cal Water Code (Porter-Cologne) “potential” pollutant sources are equal to “existing” pollutant sources. Threats water quality must be controlled before they become violations. This applies to all pollution sources, existing or potential – including septic, wastewater, stormwater, etc.. Thus, plans (THPs, NTMPs, WFMPs) must assess and provide for remedy potential pollutant sources – prior to plan approval.

Note: Once a Violation has been noted by the Regional Board (or CDFW, CalFire) the remedy can not be supported by restoration grants supported by State funding.. This is just one argument for the assessment and remediation of potential sources prior to a violation is noted.

Note: The current THP/NTMP review process supports assessment and remedial consideration of, both, active and potential sediment sources. These CEQA compliant documents are replete with disclosure of the location and nature of active and potential sediment production issues and discussion and description of the remedy – prior to plan completion and/or prior to significant rain events. This discussion/disclosure in the plan is supplemented by an Erosion Control Plan document.

(j) “Working forest management plan” means a management plan for working forest timberlands, with objectives of maintaining, restoring, or creating uneven aged managed timber stand conditions, achieving sustained yield, and promoting forestland stewardship that protects watersheds, fisheries and wildlife habitats, and other important values.

The language AB 904 (above) implies stewardship that protects watersheds and fisheries (as well as other forest values). It can be fairly argued that failure to assess and prioritize for remedy of potential sediment sources fails consistency with the above noted objective (as well as mandates under other California Code).

The AB 904 language, below supports the discussion (above) – necessity for inclusion of potential sediment sources :

Prior to plan approval:

4597.2. (b) A description of the land on which the plan is proposed to be implemented, including a United States Geological Survey quadrangle map or equivalent indicating the location of all streams, the location of all proposed and existing logging truck roads

This description and mapping should be included as part of Erosion Control Plan (or inventory of roads, erosion sites – ongoing or potential – and schedule for remediation) to be included in the Plan. As per the following:

*(d) A description and discussion of the methods to be used to avoid significant sediment discharge to watercourses from timber operations. This shall include disclosure of active erosion sites from roads, skid trails, crossings, or any other **structures or sites that have the potential to discharge sediment attributable to timber operations into waters of the state in an amount deleterious to the beneficial uses of water, an erosion control implementation plan, and a schedule to implement erosion controls that prioritizes major sources of erosion***

The AB 904 language is clear. Any CEQA or legal review of this rule making action will support the inclusion of this language in the rule making process.

Finally,;

It is only logical (as noted in the current process of THPs/NTMPs) and the intent of the AB 904 language that plan review shall include:

Field assessment by the RPF (and Regional Board, CDFW, CalFire staff during field review and agency reports).of any and all active and potential sediment sources.

Such sources, and potential sources, shall be disclosed in discussion and mapped .

Assessment shall include a description of the issue, estimate of pollutant contribution, or potential contribution, with discussion of relevant potential – need for remedy, and relationship in a priority continuum (schedule for remedy).

Description of remedial action.

Prioritization and scheduling be maintained on an inventory list where progress to completion of remedial project completion is tracked (and maintained by CalFire and Regional Board Staff).

The above shall be maintained as and “*Erosion Control Implementation Plan*” (as per the specific language of AB 904) – subject to the review and approval of all responsible agency as part of the Review Team. The “*Erosion Control Implementation Plan* “ shall be considered part of the Working Forest Management Plan. Failure to comply with the “*Erosion Control Implementation Plan*” would require revocation of the Working Forest Management Plan

Sincerely,

Alan Levine for Coast Action Group



COAST ACTION GROUP
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Affiliate of Redwood Coast Watersheds Alliance

August 20, 2014

George Gentry, Executive Officer
Management Committee
State Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

Subject: Additional Comments (#3) - Rule Making Consistent with the Language of AB 904 –
Working Forest Management Plan – August Pleading

Dear Mr. Gentry and Management Committee Members:

I have mentioned in previous comments on this Rule Making process for the Working Forest Management Plan – the need to be consistent with all applicable law – including the language contained in AB 904 (see previous comments). To date, the language in the pleading fails in a test of consistency (AB 904 section 4597.2. (b) and (d)). Additionally, in this rule making process, with final approval of the rule - as a project under CEQA – there is a requirement that the rule be internally consistent. That is; different sections must be consistent with each other (which is not currently the case). The following discussion will point to some issues, but not all, regarding internal inconsistency.

Sample Marking in the WLPZ: Sample marking in the WLPZ is to be allowed (similar to NTMPs – however NTMPs are smaller and more manageable – thus, this is not a similar situation or issue). The question arises; that with such sample marking (anadromous streams) compliance with beneficial use protection (canopy removal, stream temperature, and other habitat issues) can not be fully addressed. Sample marking does not provide, or assure, compliance with actions necessary to attain the desired/target outcomes that are necessary. Nor, does sample marking provide the information necessary for managing agencies to make adequate determinations. Note: THPs require marking the entire WLPZ for ASP compliance.

Long Term Sustain Yield - Definition and terminology in the rule language is insufficient.
See discussion provided by Sharon Duggan.

1094.6 Contents of a Working Forest Management Plan - information provided in WFMP (and this section of the rule language) must go beyond disclosure of the potential effects of the plan –

timber management. CEQA requires complete and accurate description of the project – as well as complete analysis of potential effects and mitigatory process. Some areas (sections) of the rule making do contain aspects of (but not all) the necessary information – where this information is absent from other sections. This is a problem of consistency that needs to be fixed.

(d) (4) Probable Location of proposed and existing landings in WLPZ. Probable? I would remove that word. The public and managing agencies need to know the location of these aspects of the plan – for adequate review and assessment.

Added to this section should be the location of all existing and potential erosion control issues (road failures, slides, unstable soils, etc.) Or – this information can be contained in the Erosion Control Implementation Plan.

(e) (8) This section fails to include potential erosion features that must be located and enumerated in the plan (As per the plain language in AB 904) – or – be inventoried and noted in the Erosion Control Implementation Plan.

(28) Explanation of justification for use of landings, roads, skid trails in watercourse, marshes, or wet meadows. Isn't there a policy of avoidance of these areas in the Forest Practice Rules? In-cursion into these areas can hardly be justified – or – mitigated.

(34) A description of the Lakes, meadows, and other wet areas : Included should be the location and mapping of these areas.

1094.8 Working Forest Harvest Notice Content

Information required in this section is not consistent with 1094.6

Certification of compliance by the RPF for beneficial use protection can not be accomplished– if there is failure to identify or locate slides and unstable areas, erosion sources (including potential), wet areas, activities to occur in wet areas or adjacent to or on erosion prone areas – and note applicable mitigation. Most of all of this information should be contained in an Erosion Control Implementation Plan.

An Erosion Control Implementation Plan is mandated as part of any WFMP. Certification by the RPF without such a plan in place is not consistent with the wording or intent of AB 904. Contents and use of the Erosion Control Implementation Plan must be fully described in the rule making.

The use of terminology “unreasonable expense” does not (can not) justify operations that violate the language and intent of: Basin Plan for the North Coast, Porter-Cologne Water Quality Control Act (Cal Water Code), DFG Code, Federal Endangered Species Act, and other California Code. This should be made clear in the Rules for WFMP.

Sincerely: Alan Levine for Coast Action Group



COAST ACTION GROUP
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February 4, 2015

Affiliate of Redwood Coast Watersheds Alliance

State Board of Forestry and Fire Protection
Attention: Thembi Borrás
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Subject: Working Forest Management Plan – Rulemaking – AB 904/Regulatory Compliance

Through the Rule Making process in the Management Committee issues of conformance to the language and intent of AB – 904 have, in part, been addressed. However there are outstanding/unresolved issues that require consideration and correction by the Board of Forestry.

With this letter outlining remaining issues, Coast Action Group is submitting (as part of our comments to the file) historic comment presented during the Rule Making process for review and consideration for developing final rules that are consistent with language and intent of AB 904 and other California Regulations and Statute.

Intent and Purpose

This rule making process, required by AB 904, allow for an extremely large scale project (up to 15,000 acres) - timber harvest management standards will exist in perpetuity. The intent and purpose of AB 904 and related rule making process was to allow development of projects that provide resource protection for forest production, forest resource values, and forest water quality values that are superior to the protections provided under the current Forest Practice Rules. The benefit for the landowner is a onetime approval process with established management standards. The benefit for the public and responsible managing agencies is a high level of resource protection. The benefit for all parties is superior forest production.

Presently the current language in the proposed rules for the Working Forest Management Plan has lost sight of what is being – or can be accomplished here.

Issue

Notice states “Proposed action is not expected to have an effect on the health and welfare of California residents....”

This statement/finding can not be made if:

The agency review period for WFMP is not sufficient for the Review Team to effectively review and assess such large properties and provide responsible agencies and the public with complete and accurate information for an informed decision making process. Please be aware that the proposed review period is not sufficient to accurately review a 1,000 acre Timber Harvest Plan and provide responsible agency and the public sufficient information, assessment, and mitigatory process for an informed decision making process required by CEQA.

Comment [WU1]: Comment L 4-1 Not cross referenced.

If within the planning document there is not reasonable assurance of compliance of the goal of Long Term Sustained Yield – with measurable targets supported by periodic review that factually supports that identified management activities are meeting such targets. Current language in the WFMP language falls short of providing such assessment and compliance with LTSY.

Comment [WU2]: Comment L4-2 Not cross referenced.

If within the planning document the Erosion Control Implementation Plan is not inclusive of a planning and implementation schedule to remedy active and potential sediment sources with timelines that provide reasonable assurance of compliance with – the Forest Practice Act, Cal Water Code (Porter-Cologne), and the Basin Plan.

Comment [WU3]: Comment L4-3

Contents of WFMP

1) Silvicultural method(s) to be applied during the initial harvest(s), projected future 14 harvest(s) and method(s) used in the projected growth and yield to achieve LTSY.

(i) A description and discussion of the methods to be used to avoid significant sediment discharge to watercourses from timber operations. This shall include disclosure of active erosion sites from roads, skid trails, crossings, or any other structures or sites that have the potential to discharge sediment attributable to timber operations into waters of the state resulting in significant sediment discharge and violation of water quality requirements. The WFMP shall also include an erosion control implementation plan and a schedule to implement erosion controls that prioritizes significant existing erosion site(s). This subdivision shall not apply to the extent that the RPF provides documentation to the Department that the WFMP is in compliance with similar requirements of other applicable provisions of law.

To be consistent with AB 904 Cal Water Code, CEQA, the Forest Practice Act, and the area Basin Plan(s) inclusion of the word “potential” (to effectively use this word in the rules and mandated Erosion Control Implementation Plan – as part of 1094.6 Contents of WFMP) – must be included in the wording of this section (to assure recognition and remedy, with prioritization, of controllable potential sediment sources).

Comment [WU4]: Comment L4-4

Additionally: the language in the WFMP Rule Making the words for sediment control must include “Potential” sediment sources as well as “Existing or Active” sediment sources as necessary for TMDL compliance with State and/or EPA TMDLs. Definition wording for “Potential” shall be consistent with Cal Water Code and Basin Plan definitions (existing or perched material that is

likely to enter a watercourse if not treated).

Comment [WU5]: Comment L4-5

We reference and support discussion on this subject in Regional Board (Region 1) letter to the Board of Forestry September 30, 2014 – Comments on Working Forest Management Plan

We request clarifying language to solve issue regarding interpretation of the last sentence in the paragraph above: This subdivision shall not apply to the extent that the RPF provides documentation to the Department that the WFMP is in compliance with similar requirements of other applicable provisions of law. The meaning and intent of this language is unclear – convoluted. The interpretation of this language is likely to lead to interpretation that diverges from the intent of the AB 904 and necessity to meet legal requirements to comply with the Basin Plan(s) and other California Code – including CEQA consistency requirements.

Comment [WU6]: Comment L4-6

These comments and previous comments (with discussion of issues) are submitted to the file for your review and consideration.

Sincerely: Alan Levine for Coast Action Group



Sonoma County Water Coalition

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707-494-5769

Senator Kevin de León, Chair
Senate Appropriations Committee
State Capitol, Room 2206
Sacramento CA 95814

Dear Senator Kevin de León

August 25, 2013

Re: AB 904

The Sonoma County Water Coalition (SCWC) includes 31 organizations, representing more than 24,000 concerned citizens. SCWC is especially concerned about the preservation of a safe, economical and reliable water supply for all living things. SCWC also works to preserve healthy ecosystems, supports watershed restoration and protection, and careful oversight of all public trust resources, including surface and groundwater quality and quantity.

Currently the language of AB 904 provides for a Working Forest Management Plan (WFP), similar to a Non-Industrial Timber Plan, that would be approved under rules in perpetuity without necessary control language to assure resource protection.

The initial basis of AB 904 was to develop long term management plans for private landowners that would allow 'working forests' while protecting and enhancing forest values, old growth, species diversity, robust stands, and water quality. However, with the existing language there are some very serious issues that relate to acceptable forest management.

Below are some of the problematic issues that need to be remedied:

1. These proposed plans are so large that reasonable review of environmental impacts is unlikely to take place. The original acreage of 2,500 can be increased to 15,000 acres. Large plans, up to 15,000 are difficult for responsible agencies to review and make recommendation on. Currently there is not sufficient funding for Review Team agencies to accomplish such large projects. Nor is there funding for Regional Board development for necessary Waste Discharge Requirements (pollution control plans).
2. The proposed long term management goals have a hundred year horizon, a time frame that is untenable without establishing specific benchmarks in shorter time frames. In addition, other silvicultural applications that approximate clear-cutting can be employed that do not promote sustain yield objectives and can have significant adverse environmental impacts.
3. The permanent approval would not allow for updates in forest management regulation to meet criteria established by new or ongoing studies that would be more protective of environmental resources that include water quality and wildlife protocols. Nor would

Review Team responsible agencies, other than Cal Fire, CDFW, Coastal Commission, and Regional Water Board, be able to adjust such plans according to need in the future.

4 The language in AB 904 omits the necessity for erosion control and road maintenance requirements that are essential to deal with impaired water bodies and meet regional Basin Plan requirements, by limiting sediment inputs to surface waters. This will not allow for recovery of watersheds listed as sediment and temperature impaired, and create a significant hole in the regulatory structure.

5. Protection or development of old growth type stands are limited and not enforceable.

6. The proposed five year agency review allows no assurance that Review Team recommended upgrades will be respected as the owner employed forester has authority to deny recommendations on the basis of cost or need.

7. Review and enforcement provisions are weak and agencies have little time to respond to issues at time of notice to commence operations;

8. Last but not least is the important issue of lack of public notification and participation in the process.

If these issues are not addressed AB 904 would allow for some serious negative consequences to forest and water quality values as well as not adhering to the intent of the Forest Practice Rules.

These are our recommendations for improvement to the bill if it moves forward:

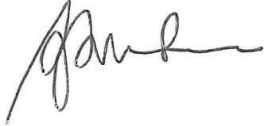
- Limit NTMP ownerships to the current level of 2500 acres
- Limit the planning horizon to a more reasonable and realizable time period – 30 years
- Update plans to current changes in the Forest Practice Rules when the Forester lays out new operations and issues an NTO, Notice To Operate, or upon Review Team Recommendation at the 5 year project review interval (not at the discretion of the RPF) where there is opportunity to make necessary updates.
- Require ownership wide erosion control planning and road management plans (to comply with need to attain Water Quality Standards in listed impaired watersheds)
- Protections for Late Successional Forests should be evaluated at a minimum of 5 acres (not 10 acre sizes) which will be more protective especially with smaller sections existing in Mendocino County.
- Compliance with Anadromous Salmonid Protection standards in the Forest Practice Rules (and relevant changes to same) and other new regulation deemed necessary by trustee agency.
- Public notification of Notices to Operate (NOPs) need to be posted on the ftp site on the Cal Fire website.

Page 2
2/15/15

Please take action to limit the size and scope of forever projects as proposed by AB 904.

We thank you for considering the above information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stephen Fuller-Rowell', with a stylized, cursive script.

Stephen Fuller-Rowell
Sonoma County Water Coalition

Copies to:

The Nature Conservancy
201 Mission St., 4th Floor,
San Francisco, CA 94105

attn: Elizabeth Forsburg and Pablo Garza

Trust for Public Land
101 Montgomery St. Suite 110,
San Francisco, CA 94104

attn: Richard Mastrodonato



CALIFORNIA
LICENSED
FORESTERS
ASSOCIATION

2133 Carson Mesa Rd • Acton, CA 93510
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email • clfa@volcano.net web • www.clfa.org

February 26, 2015

Board of Forestry and Fire Protection
Dr. Keith Gilles, Chair
P.O. Box 944246
Sacramento, CA 94244-2460

Re: Working Forest Management Plan (WFMP) Proposed Rule Language

Dear Dr. Gilles and Members of the Board,

The California Licensed Foresters Association (CLFA) has reviewed the above-referenced rule package. We would like to commend you, the committee, and Board staff for the time and effort you have spent to get this rule package to its current state. We especially appreciate the frequent consultations with legislative staff when questions of intent arose during the development process.

The Working Forest Management Plan (WFMP) traces its origin to AB 2170 (Chesbro, 2012). Sponsored by CLFA and Forest Landowners of California (FLC), AB 2170 was removed from further consideration in November 2012 because more time was needed to ensure that legislation enacting the WFMP would benefit the target landowners while satisfying needed environmental protections. Early in 2013 Asm. Chesbro asked CLFA and FLC to join his Forestry Advisory Committee comprised of a diverse array of stakeholders convened to develop the WFMP concept. This Committee held numerous hearings, public meetings, and field trips building consensus and support shaping the WFMP concept into what became AB 904 (Chesbro, 2013). CLFA and FLC are heavily invested in the WFMP having spent hundreds, if not thousands, of hours on what is arguably the most comprehensive forestry bill since the 1973 Z'berg Nejedly Forest Practice Act coming to fruition due to the diligent work of all stakeholders involved.

Exercising patience and holding the WFMP concept from the 2012 to the 2013 legislative session gave a broad array of stakeholders, including various state agencies, adequate time to consider and comment upon the framework of the WFMP. This included significant input from Cal Fire (monitoring provisions), Water Quality Control Boards (erosion control plan) and Department of Fish and Game (habitat conservation). This input was embraced by all stakeholders to balance environmental considerations with the ultimate utility of the WFMP.

We ask that the Board recognize that final legislation enacting the WFMP represents a delicate balance not easily achieved by a diverse and broad array of stakeholders. Throughout the legislative process seemingly broad agreement that the interest of the state would be served by having moderately large private timberland landowners commit to a long term management strategy gave rise to tireless and diligent effort on the part of all stakeholders culminating with the Governor signing the WFMP into law on October 8, 2013. This benefit to the state will only materialize if the WFMP retains its utility and landowners' interests are served by entering into this permit.

In order for the WFMP to succeed, it must be used. Throughout the rulemaking process we have witnessed well intentioned requests by agency representatives threaten to erode the appeal of the WFMP which represents a real opportunity to implement a true watershed management approach. If the WFMP becomes too burdensome, it will not be used and all the hard work of all involved, including members of your Board, in developing the enacting legislation and subsequent FPRs will have been for nothing. **We strongly urge the Board to not stray from the many negotiated items included in AB 904 (Chesbro, 2013).**

Please understand that CLFA and FLC want this permit to succeed and that we are providing these comments with the end users in mind. The regulatory community has taken this opportunity to request every improvement to existing processes they have dreamed of without taking the time to show environmental deficiencies in the performance of current Forest Practice Rules (FPRs). Please consider that this document from its initial inking has only gotten more restrictive. There have been no concessions given from any other parties involved besides the landowners that may eventually utilize the WFMP. This has truly been a one way street in terms of language development and it weighs on us heavily. Our hope and vision has always been that this permit be widely adopted by eligible landowners and not become an unusable addition to FPRs much like the PTHP/PTEIR has proved to be.

Though we are generally satisfied in with the proposed rule package, we would like to offer the following comments on a few specific outstanding issues we believe would strengthen the utility and benefits offered by the WFMP.

5-Year Review

The idea of the 5-year review was brought forward by then Deputy Director Bill Snyder in an attempt to address some of the criticism that the Department receives about NTMPs specifically about over cutting their growth yield analysis. This was meant to be a paper review of the administrative record, not a mandatory field review, nor was it intended to open up the approved plan for new review. The intent of this review was for the Department to convene a meeting with the interdisciplinary review team to **verify that operations have been conducted in accordance with the plan and applicable laws and regulations.**

The legislative intent on this is clear, verification that operations have been conducted in accordance with the plan and applicable laws and regulations. As is currently before this board, consideration of potentially significant adverse impacts to the environment that may occur from continuance of the WFMP, or the Department being presented with a fair argument that a project may have a significant adverse effect on the environment goes beyond verification that operations have been conducted in accordance with the plan and applicable laws and regulations constituting a discretionary CEQA review of an approved CEQA document. We are not aware of anything in California statute allowing this to occur. The way that the 5-Year review is currently structured, no WFMP will ever truly be an approved environmental review document.

There is currently no deadline for completing the 5-year review process, only that the meeting shall convene within 30 days of each 5-year anniversary and a field inspection, if needed, occur within 60 days of each 5-year anniversary. We suggest a final report be provided within 60 days of the the 5-year anniversary, or 90 days if a field inspection is needed. This would give the review team at a minimum 30 days from the meeting, or field inspection if necessary, to provide the findings of the review.

Comment [WU7]: Comment L6-1

15380 Species

There are two issues with regard to species listed under CEQA as 15380(d). In the legislative language of AB 904, it is very clear that 15380(d) species be discussed in only the notices of each operation. The Management Committee, at the behest of DFW has decided that 15380(d) species should be discussed within the body of the WFMP. This again was something which was done intentionally by the legislature.

15380 appears only one time in statute, PRC 4597.11(f), the Working Forest Harvest Notice (Notice). This was done because as these species move, die or otherwise vacate a site, the legislature decided that the appropriate time to deal with species that aren't currently listed as endangered or threatened is at the time the Notice is submitted to Cal Fire.

PRC 4597.2(h) limits disclosures of take avoidance methodologies, enforceable protection measures, habitats, and how management will maintain those habitats over time for state or federally **listed** threatened, candidate, or rare plant or animal species. There is no language in this section that would imply that similar disclosures were intended to extend to non-listed species.

Conservation of biological resources is of great importance to the success of the WFMP. Being a long term management plan spanning thousands of acres where timber operations will not occur on some of those acres for many decades, ensuring the conservation of biological resources creates unique challenges. Listed and sensitive wildlife and plant species move with time. Disclosure of their locations in the WFMP itself provides a snapshot in time but does nothing to ensure the long-term conservation of the species. This can only be achieved through targeted field

investigations in connection with Notices. The legislature understood this in tying the requirement to disclose new locations of listed and sensitive species as amendments to the plan prior to filing each Notice. Demonstration of take avoidance for state and federally listed species is required; it is not required for species qualifying for consideration under 15380(d). The clear legislative intent was to avoid loading up the WFMP with information that accomplishes nothing in the interest of conservation of these species. In the interest of efficiency and ensured conservation of the species, the legislature chose instead to rely on field evaluations conducted prior to submission of Notices.

The specific problem lies in 1094.6(n)(1) Contents of WFMP. As currently worded the plan must address state or federally listed threatened, candidate, and endangered species; rare plants; Sensitive Species pursuant to 14 CCR § 895.1; *and species that meet the criteria under 14 CCR § 15380(d)* (emphasis added), that timber operations could adversely impact by potential changes to habitat. 14 CCR § 15380(d) is found under Chapter 3 of the Guidelines for Implementation of the California Environmental Quality Act meaning that any consideration of species qualifying for consideration under 14 CCR § 15380(d) is bound by the limitations of CEQA. In order to address these species, the RPF would be forced to speculate timing of harvest, speculate the stand conditions at the time of harvest, and speculate as to whether the species is even present at the time of harvest. 14 CCR § 15187 Environmental Review of New Rules and Regulations instructs that environmental analysis should not engage in speculation or conjecture. It would be inappropriate for this Board to force RPFs to engage in speculation as it relates to species qualifying for considerations under 14 CCR § 15380(d).

Comment [WU8]: Comment L6-2 Not cross referenced.

Section 1094.8 (g) and section 1094.8(g)(2) requires the RPF to amend the WFMP disclosing new locations of all plant and animal species which are listed as rare, threatened, endangered or that meet the requirements for 15380 listed species “within and adjacent to the logging area”. There is no guidance on what constitutes “adjacent”. We would suggest that a distance of 100 feet from the NTO area be utilized for the provisions of these sections as this would be consistent with the distance from appurtenant roads that are considered to be part of the logging area.

Comment [WU9]: Comment L6-3 Not cross referenced.

Landowner Vs. Plan Submitter Vs. Designated Agent Vs. RPF

There are numerous instances where the responsibility falls on one individual or another, but there are some areas that need some substantial cleanup before this rule package should go forward as there are some serious inconsistencies.

An example of this can be found on 1094.31

“Cancellation of the plan may be appealed by the plan submitter(s) or landowner(s) the Designated Agent utilizing the process pursuant to PRC § 4597.6(e)(1) and 14 CCR 1094.17(e).” The plan submitter and the landowner(s) agent may be able to appeal the cancellation of a WFMP, but the landowner themselves can’t. Given the seriousness of

a WFMP cancellation, the landowner(s) should have direct standing to appeal the cancellation.

Comment [WU10]: Comment L6-4

14 CCR 1094.10(c) requires an amendment identifying a Designated Agent at least five (5) days prior to filing the first Working Forest Notice. This should only be a requirement if the the landowners' Designated Agent is different than that in the contents of the WFMP and not amended for every Notice

Comment [WU11]: Comment L6-5

Logging Roads vs. Roads

Throughout the current language of the WFMP, there are various uses and inferences to roads and logging roads. We would suggest that the current language be cleaned up to clearly discuss logging roads as not all roads are used for logging purposes.

Page 15 line 24
Page 17 line 18
Page 21 line 11
Page 21 line 19
Page 41 line 21

Comment [WU12]: Comment L6-6

1094.14 Notification of Commencement of Operations

Add e-mail notification as this has become the standard acceptable practice for communications between RPFs and the Department.

Comment [WU13]: Comment L6-7

1094.19 Nonconformance of WFMP

This language is redundant to 1094.17(c). We suggest 1094.19 be struck, and the language of 1094.19 replace the current language in 1094.17(c).

Comment [WU14]: Comment L6-8 Not cross referenced.

1094.6 Contents of WFMP (Growth and Yield)

As currently written, items which pertain specifically to growth and yield appear seven times within 1094.6, spanning six unique sections. More specifically, (f)(3), (g) & (g)(3), (h)(1), (m)(1), (n), and (p)(1). While growth and yield is an indisputably important facet of the WFMP, consolidation of these references to fewer sections or one section may serve to better guide the RPF in development of the document, and aid in plan review.

Comment [WU15]: Comment L6-9 Not cross referenced.

Review of Newly Developed Forms

As new forms are developed for the WFMP, we ask that the review of these forms be public so the RPF community is able to review and comment on the content.

Comment [WU16]: Comment L6-10

1094.11 RPF Responsibilities

Currently the FPRs contain three separate configurations of Registered Professional Foresters Responsibilities in 1035.1, 1090.10 and 1092.12. The addition of the RPF Responsibilities for the WFMP would allow for a total of four iterations. Please provide for a thorough analysis of RPF Responsibilities to insure all needed responsibilities are captured and insure consistency across the current range of responsibilities.

Comment [WU17]:
Comment L6-11

1094.11(b)(1): Add e-mail notification as this has become the standard acceptable practice for communications between RPFs and the Department.

Comment [WU18]:
Comment L6-12

Add "All disclosures made between and RPF and an affected party pursuant to this section may be kept confidential", in order to be consistent with both 1092.12(f) and 1035.1(d).

Comment [WU19]:
Comment L6-13

Thank you for considering these comments for incorporation into the WFMP rule plead.

Sincerely


Clayton E Code
RPF #2867
CLFA Vice President



The California Licensed Foresters Association, with a membership responsible for the sustained management of millions of acres of California forestland, represents the common interests of California Registered Professional Foresters. The Association provides opportunities for continuing education and public outreach to its membership, which includes professionals affiliated with government agencies, private timber companies, consultants, the public, and the academic community. Governed by an elected Board of Directors, CLFA was established in 1980 after the passage of the landmark California Professional Foresters



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

North Coast Regional Water Quality Control Board

March 2, 2015

Mr. George D. Gentry
Executive Officer
Board of Forestry and Fire Protection P. O.
Box 944246
Sacramento, CA 94244- 2460

Dear Mr. Gentry:

Subject: Comments on the Board of Forestry and Fire Protection proposed Working Forest Management Plan, dated January 16, 2015, Title 14 of the California Code of Regulations

File: Timber, Board of Forestry, General

Enclosed is a Memorandum dated, March 2, 2015, which provides Regional Water Board staff comments on the proposed Working Forest Management Plan, as published January 16, 2015. These comments were prepared by David Fowler, Regional Water Board staff.

We appreciate having had the opportunity to participate and to provide substantial input during the development process of this rule package to ensure actions authorized under this regulation comply with Regional Water Quality Control Board water quality requirements.

Overall we believe the proposed Working Forest Management Plan rules provide an opportunity for long term planning and management of timberlands and protection of resources. We are concerned, however, that the proposed rule language is reactive rather than proactive with respect to the requirement addressing erosion sites. Addressing only active and existing erosion sites while ignoring potential erosion sites is inconsistent with other existing sections of the Forest Practice Rules, the requirements of the Water Quality Control Plan (Basin Plan) for the North Coast, and the Porter- Cologne Water Quality Control Act.



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

North Coast Regional Water Quality Control Board

We believe that by not addressing potential erosions sites, it is likely that the proposed WFMP regulations will not insure compliance with the North Coast water quality requirements, nor the Water Quality Control Plan for the North Coast Region. We recommend that rules be developed that are consistent with applicable water quality requirements and protection of the applicable beneficial uses of water. This approach would help our agencies and provide the people of the state with efficient government.

Again, thank you for the opportunity to review and comment. If you or your staff have any questions or concerns regarding our comments or would like additional information, please contact David Fowler (707- 576- 2756) or Jim Burke (707- 576- 2289) of our staff.

Sincerely,

Fred Blatt
Digitally signed by Fred
Blatt
Date: 2015.03.02 11:55:08
-08'00'
Water Boards

Fred Blatt
Division Chief
Nonpoint Source & Surface Water Protection Division

150302_DLF_dp_WFMP_CoverLtr



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

North Coast Regional Water Quality Control Board

March 2, 2015

To: Fred Blatt
Division Chief
Nonpoint Source and Surface Water Protection Division

From: David Fowler
Representing review staff

Subject: Review and Comments on the Board of Forestry and Fire Protection proposed Working Forest Management Plan, dated January 16, 2015, Title 14 of the California Code of Regulations

North Coast Regional Water Quality Control Board (Regional Water Board) staff worked cooperatively and collaboratively with members of the Board of Forestry and Fire Protection (BOF or Board), their staff, staff from the California Department of Forestry and Fire Protection, the California Department of Fish and Wildlife, the California Geological Survey, and members of the public during the development and review process of the proposed *Working Forest Management Plan* (WFMP) sections of the Forest Practice Rules (FPRs). The Public Review draft of the WFMP rules was published on January 16, 2015 for a 45 day comment period. Regional Water Board staff have reviewed the draft text.

Assembly Bill 904 created a new alternative for managing “working forest” timberlands up to 15,000 acres in size. The Bill states that “It is the policy of the state to encourage prudent and responsible forest resource management of nonindustrial timberlands by approving working forest management plans in advance and authorizing working forest timber harvest notices to be filed ministerially.” WFMPs are intended to build on the model provided by nonindustrial timber management plans.

The proposed WFMP rules contain many commendable goals and objectives. However, please consider the following comments and suggested revisions we believe are necessary to align the proposed language of a portion of section of 1094.6(i), part of the “Contents of WFMP” (page 17, lines 16 through 22) with other pertinent FPR rule sections, as well as Water Quality requirements. Aligning the FPR language and water quality requirements at this stage of rule development is far more efficient than addressing the matter in the Regional Board’s permitting process. The proposed subsection states:

“1094.6(i) A description and discussion of the methods to be used to avoid significant sediment discharge to watercourses from timber operations. This shall include disclosure of active erosion sites from roads, skid trails, crossings, or any other structures or sites that have the potential to discharge sediment attributable to timber operations into waters of the state resulting in significant sediment discharge and violation of water quality requirements. The WFMP shall also include an erosion control implementation plan and a schedule to implement erosion controls that prioritizes significant existing erosion site(s). ...”

While Regional Water Board staff strongly support the intent of this section, including a description and discussion of methods to be used to avoid significant sediment discharge and an erosion control implementation plan in WFMPs, addressing only “active” and “existing” erosion sites is problematic. Besides being reactive rather than proactive, addressing only active and existing erosion sites is inconsistent with other existing sections of the Forest Practice Rules, sections of the recently enacted Road Rules, the requirements of the Water Quality Control Plan (Basin Plan) for the North Coast, and the Porter- Cologne Water Quality Control Act.

WFMPs must comply with all applicable requirements of the Forest Practice Rules. Section 916.4(a) [936.4(a), 956.4(a)] requires an RPF to conduct a field examination and evaluate areas near, and areas with the *potential* to directly impact, watercourses and lakes for sensitive conditions, identify those conditions, and describe measures to protect and restore to the extent feasible, the beneficial uses of water. Section 923.1(e) [943.1(e), 963.1(e)] of the new Road Rules requires road inventories. It requires an RPF to evaluate all logging roads and landings in the logging area, including appurtenant roads, for evidence of significant existing *and potential* erosion sites, and specify necessary and feasible treatments for those sites.

Comment [WU20]: Comment L7-1

Additionally, WFMPs must comply with the requirements of the regional Basin Plans or the Porter- Cologne Water Quality Control Act. Both the Act and the Basin Plans recognize threatened or potential discharges as well as active or existing discharges.

Comment [WU21]: Comment L7-2

It should be noted that proposed section 1094.6(i) covers two distinct and very different items. The first is a requirement to describe and discuss the methods to be used to *avoid* significant sediment discharge to watercourses. The second is a requirement for an erosion control management plan.

The first part of section 1094.6(i) twice uses the term “significant sediment discharge,” a term that is defined in the Forest Practice Rules definitions, section 895.1. The definition of “significant sediment discharges” includes the concept of potential as well as active discharges. Because of this, the use of the phrase “active erosion sites” in line 17 is confusing. Regional Water Board staff suggest deleting the word “active” from line 17 so that the sentence will read, “This shall include disclosure of ~~active~~ erosion sites...”.

Comment [WU22]: Comment L7-3

The description of the contents of the erosion control implementation plan uses the undefined term “significant existing erosion site(s)” (line 22). Besides conflicting with

other existing regulations and statutes, since this term is undefined, it leads to ambiguity and the inevitable question of “What is *significant*?” This could be avoided by using the existing term defined in section 895.1, “significant existing or potential erosion site.”

Comment [WU23]: Comment L7-4

We believe the BOF should avoid use of an undefined term for the contents of a sediment control implementation plan, especially when it adds ambiguity and makes this section internally inconsistent with the rest of the Forest Practice Rules.

In order to make the WFMP language internally consistent with other provisions of the Forest Practice Rules and to make it consistent with the requirements of the regional Basin Plans and the Porter- Cologne Water Quality Control Act, Regional Water Board staff suggest changing lines 20 through 22 to read: “The WFMP shall also include an erosion control implementation plan and a schedule to implement erosion controls that prioritizes significant existing **or potential** erosion site(s).”

Comment [WU24]: Comment L7-5

Lastly, the last sentence of section 1094.6(i) is unclear (page 17, lines 22 through 24). It was copied directly from AB 904 and the wording is somewhat convoluted. It appears the intent of this section is to allow erosion control plans developed in compliance with the requirements of other agencies to fulfill the requirements of this section. A similar allowance exists for prescribed maintenance period inspections in section 923.7 [943.7, 963.7](k)(2). In order to avoid confusion and clearly state the intent of this sentence, Regional Water Board staff suggest using section 923.7(k)(2) as a template. Regional Water Board staff suggest replacing the last sentence of proposed section 1094.6(i) with, “Erosion control implementation plans developed pursuant to California Regional Water Quality Control Board requirements may be used to satisfy the erosion control implementation plan requirements of this section.”

Comment [WU25]: Comment L7-6

In summary, Regional Water Board staff suggest proposed section 1094.6(i) (page 17, lines 16 through 24) should be revised to read:

1094.6(i) “A description and discussion of the methods to be used to avoid significant sediment discharge to watercourses from timber operations. This shall include disclosure of ~~active~~ erosion sites from roads, skid trails, crossings, or any other structures or sites that have the potential to discharge sediment attributable to timber operations into waters of the state resulting in significant sediment discharge and violation of water quality requirements. The WFMP shall also include an erosion control implementation plan and a schedule to implement erosion controls that prioritizes significant existing **or potential** erosion site(s). ~~This subdivision shall not apply to the extent that the RPF provides documentation to the Department that the WFMP is in compliance with other applicable provisions of law.~~ **Erosion control implementation plans developed pursuant to California Regional Water Quality Control Board requirements may be used to satisfy the erosion control implementation plan requirements of this section.**”

Borras, Themb@BOF

From: Rob DiPerna <rob@wildcalifornia.org>
Sent: Monday, March 02, 2015 3:25 PM
To: Public Comments@BOF
Subject: Fwd: EPIC Comments Regarding 45-day notice: WFMP
Attachments: wfmp_45daynotice_comments_epic_3_2_15_final.pdf; wfmp_draftregs_comments_epic_4_7_14_final.pdf; Forsman et al 2011.pdf; Raphael et al 2011 - MAMU habitat 15 year report.pdf; 20140911_WCFSR_finaldraft.pdf

Please consider the attached.

Rob DiPerna
California Forest and Wildlife Advocate
Environmental Protection Information Center
145 G Street Suite A
Arcata, CA 95521
Office: (707) 822-7711
Cell: (707) 845-9528
rob@wildcalifornia.org
www.wildcalifornia.org

----- Forwarded message -----

From: **Rob DiPerna** <rob@wildcalifornia.org>
Date: Mon, Mar 2, 2015 at 3:18 PM
Subject: EPIC Comments Regarding 45-day notice: WFMP
To: "board.public.comment@fire.ca.gov" <board.public.comment@fire.ca.gov>

To whom it may concern:

Please find attached EPIC's comments regarding the 45-day notice of proposed rulemaking for the WFMP.

Please also find enclosed all the referenced attachments, save the 2014 Final Recovery Plan for the SONCC Coho. As this document is too large to email, we provide the link here instead:

http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/southern_oregon_northern_california_coast/southern_oregon_northern_california_coast_salmon_recovery_domain.html

Please do not hesitate to contact me if there are questions. Thank you for your attention.

Rob DiPerna
California Forest and Wildlife Advocate
Environmental Protection Information Center
145 G Street Suite A
Arcata, CA 95521

Office: [\(707\) 822-7711](tel:(707)822-7711)
Cell: [\(707\) 845-9528](tel:(707)845-9528)
rob@wildcalifornia.org
www.wildcalifornia.org



Keeping Northwest California wild since 1977

Sent via electronic mail to: publiccomments@bof.ca.gov on date shown below

March 2, 2015

J. Keith Gilles, Chairman
California Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244

RE: Comments on 45-day Notice for Proposed Adoption of Regulations for the Working Forest Management Plan

Dear Chairman Gilles and Board Members:

The Environmental Protection Information Center submits these comments for consideration by the Board of Forestry and Fire Protection in its review of the proposed regulations for the "Working Forest Management Plan" documents and review process.

The Environmental Protection Information Center ("EPIC") is a community-based, membership driven environmental non-profit organization that speaks for both its members and supporters. EPIC has established a long history of engagement in the monitoring and enforcement of laws and regulations related to private timberland management over the last 37 years. EPIC has been on the forefront of enforcing laws requiring sustainable forest practices, including its successful challenge to the Pacific Lumber/Maxxam Sustained Yield Plan. EPIC advocates on behalf of its members for sustainable forest practices to ensure protection of all natural resources, including water, protected and listed species, and cultural and historic sites. EPIC members are directly impacted by private land forest operations, particularly in terms of impacts to natural resources, water quality and quantity, ecological processes, and aesthetics. Timber operations which cause adverse environmental harm have a direct impact on EPIC members, particularly because of the loss of timberland productivity and failure to adequately protect natural resources which depend on quality timberlands. For example, EPIC members from throughout California require clean and adequate water sources, and pure air – resources which are directly affected by poorly regulated logging practices throughout California. EPIC maintains rulemaking by the Board of Forestry and Fire Protection ("Board") must adhere to all applicable laws to ensure sustainable forestry and protection of natural resources will be an effective standard for private land timber management.

Environmental Protection Information Center
145 G Street Suite A Arcata, CA 95521
(707) 822-7711
www.wildcalifornia.org

INTRODUCTION

EPIC believes management planning is a good thing, particularly to define long-term resource planning, identify and evaluate landscape issues, provide mechanisms to remedy legacy and operational environmental impacts, and provide an ongoing feedback-loop that monitors practices and conditions to maintain ecological processes and increase productivity and sustainable forestlands while protecting natural resources.

The California Legislature passed AB 904 to provide a landscape planning mechanism for non-industrial timberland owners with ownerships of less than 15,000 acres. While EPIC did not support AB 904, now that it is law, EPIC wants to see it implemented in a manner that is effective and consistent with the Legislative intent “to encourage long-term planning, increased productivity of timberland, and the conservation of open space on a greater number of nonindustrial working forest ownerships and acreages.” (PRC § 4597(a)(3)). Thus, EPIC supports the policy to “encourage prudent and responsible forest resource management of nonindustrial timberlands” through development of good “Working Forest Management Plans.” (PRC § 4597(a)(4)). EPIC believes, as did the Legislature when it enacted AB 904, that to achieve benefits such as “added carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, aesthetics, and the maintenance of ecosystem processes and services,” the Working Forest Management Plan must “comply with *rigorous timber inventory standards* that are subject to periodic review and verification. (*Id.*, (a)(5)). (Emphasis added).

A Working Forest Management Plan (“WFMP”), by definition, is a management plan with objectives of “maintaining, restoring, or creating uneven aged managed timber stand conditions, achieving sustained yield, and promoting forestland stewardship that protects watersheds, fisheries and wildlife habitats, and other important values.” (PRC § 4597.1 (j)). Only land owners with less than 15,000 acres of timberland, and who are not primarily engaged in the manufacture of wood products, are eligible to secure approval of a WFMP. (*Id.*, (I)). These landowners must have the objective of “an uneven aged timber stand and sustained yield” which they propose to achieve through implementation of a WFMP. (PRC § 4597.2).

The Legislature directed the Board of Forestry to adopt regulations as needed to implement AB 904 provisions. (See, e.g., PRC §§ 4597.2(l), 4597.3, 4597.8, 4597.11(m), and 4597.12(b)). EPIC has previously provided comment on Board committee drafts of proposed WFMP regulations. Because we believe much of what EPIC has identified in the past remains relevant to the currently proposed regulations, we include a copy of comments from April 7, 2014 (Attachment A). One of EPIC’s primary concerns was the Board’s failure in previous draft to provide actual interpretation and clarity of the statutes enacted pursuant to AB 904, and instead to simply restate much of the statutory language. EPIC strongly disagrees with this approach, as we believe AB 904 requires interpretation and guidance for effective implementation. EPIC identified many examples of this and refer the reader to our earlier comments. The Board’s Initial Statement of Reasons (“ISOR”) now tries to justify this practice under a theory that “duplication of statute” was necessary for “consistency” and “to satisfy the clarity standard.” (ISOR, at p. 7). EPIC disagrees. Because the draft regulations now duplicate language, or in some cases introduce new language which further confuses the statutory standards, many of the regulations do not satisfy the Administrative Procedures Act standards for clarity and consistency.

Comment [TB26]: Comment L9-1Not cross referenced.

Underlying this regulatory effort is the reality that several hundred thousand acres of forest land may be eligible for and receive Working Forest Management Plan approval. As lifetime plans, it is critical that the Legislative intent be fully and accurately implemented in a manner that protects timberland and other natural resources. The regulations as drafted do not provide the basic information required by, or offer interpretation of, governing statutes in a manner that will achieve the California's stated goals and objectives in authorizing WFMPs.

Comment [TB27]: Comment L9-2, Not cross referenced.

These comments focus on core issues which must be addressed through changes in the proposed regulations, before the Board may act to approve a set of regulations for the WFMP. The regulations fail to satisfy the statutory duty embodied by AB 904. They lack necessary definitions. They fail to require content to ensure that long term sustained yield ("LTSY") is plainly stated, and achieved through implementation of unevenaged management and monitoring. The regulations fail to provide adequate measures to protect water quality, protected and listed species, and cultural and historic sites. They fail to ensure that cumulative impacts are properly evaluated and mitigated. The regulations fail to meet governing statutory requirements by permitting exceptions to standard rule provisions, and authorizing stocking standards which do not achieve increased timberland productivity. The regulations also fail to meet the statutory requirement for a Five Year Review process. Because of these failures, the Board's proposed rules do not satisfy CEQA requirements.

Comment [TB28]: Comment L9-3, Not cross referenced.

EPIC requests that the Board consider and respond in writing to all comments presented, evidence submitted, and the suggestions made.

I. LEGAL FRAMEWORK

Rulemaking is subject to the requirements of the California Administrative Procedure Act ("APA"). To be effective, a regulation must be consistent and not in conflict with the governing statute, and must be reasonable necessary to effectuate the purpose of the statute. (Gov't Code § 11342.2). To be approved by the Office of Administrative Law, the regulations must satisfy these criteria: necessity, authority, clarity, consistency, reference and nonduplication. (Gov't Code § 11349.1). "Necessity" means to effectuate the purpose of the governing statute, taking into account the totality of the record before the agency at the time of approval. (Gov't Code § 11349 (a)). "Clarity" means the regulation must be "easily understood" by those who are directly affected by them; "consistency" means "being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions or other provisions of law." (*Id.*, subd. (c) and (d)). A notice of proposed rulemaking must include discussion of "matters required by statute(s) applicable to the specific state agency or to any specific regulation or class of regulations." (Gov't Code § 11345.5 (a)(4)).

This means the Board's rulemaking must meet the standards of the Forest Practice Act, including AB 904, the legislative bill which enacted the Working Forest Management Plan provisions codified in the Forest Practice Act as Public Resources Code sections 4597 - 4597.22. Thus, rules must satisfy the Forest Practice Act goal of maximum sustained production of *high quality timber products* while protecting natural resources and other values. (PRC § 4513, emphasis added). And rules must comply with AB 904's intent, which requires a Working Forest Management Plan to "comply with rigorous inventory standards" intended to "ensure long-term benefits such as added carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, aesthetics, and the maintenance of ecosystems processes and services." (PRC § 4597 (a)(5)).

One of the others laws which the Board must follow in the review and approval of regulations is the California Environmental Quality Act (“CEQA”). Pursuant to CEQA, the Secretary of Resources has certified the rulemaking process by the Board as a "regulatory program" within the meaning of Public Resources Code section 21080.5. Section 21080.5 of CEQA provides a mechanism for the use of an environmental review document “in lieu of the environmental impact report.” In adopting regulations, the Board must comply with all requirements of CEQA except those provisions of Chapters 3 and 4 of CEQA (commencing with sections 21100 and 21150), and Public Resources Code section 21167. The Board must also comply with its certified program, consisting of its legislative mandates and regulations. A certified program remains subject to other provisions in CEQA, including the policy of avoiding significant adverse effects on the environment, (14 CCR § 15250), and adequate evaluation and mitigation of cumulative impacts. (*EPIC v. Johnson* (1985) 170 Cal.App.3d 604).

The CEQA certification statute specifies the minimum requirements for Board regulations. These include requirements that the rules ensure that projects approved pursuant to Board rules (1) will not be approved if there are feasible alternatives or feasible mitigation measures available that could substantially lessen a significant adverse effect of the activity on the environment; and (2) are subject to and include orderly evaluation and which requires the plan document to be consistent with the environmental protection purposes of the FPA. (PRC § 21080.5(d)(2)(A), (B)). The CEQA certification also requires that the plan that is subject to the rules, such as the Working Forest Management Plan, must include a “description of the proposed activity with alternative to the activity, and mitigation measures to minimize any significant adverse effect on the environment from the activity.” (PRC § 21080.5(d)(3)(A)). CEQA requires that any project be evaluated for the potential for, and avoidance at time of approval of, significant and cumulative adverse impacts upon the environment. (PRC §§ 21000, 21001, 21003.1, 21080.5(d)(3)(A)).

This means the Board must comply with its own rulemaking regulations, as well as Public Resources Code section 21080.5 (d). Among other things, these provisions require the Board to evaluate and mitigate possible significant adverse environmental effects, and propose reasonable alternatives to rule proposals. (14 CCR § 1142). The Board must also evaluate during its process how well the proposed rules would serve the policies of the Forest Practice Act (“FPA”), eliminate any avoidable environmental damage, serve the production of high quality timber while maintaining the productivity of all affected resources, and how the rule proposal could be modified to more effectively accomplish the purposes of the Forest Practice Act. (14 CCR § 1144).

In summary, the proposed regulations fail to provide for adequate standards to address significant adverse individual cumulative impacts on the environment, fail to provide standards for mitigation and/or minimization of significant adverse individual or cumulative impacts, and fail to identify or describe reasonable alternatives to the proposed regulations that could potentially minimize or mitigate to insignificance any potential significant adverse individual or cumulative impacts to the environment.

Comment [TB29]: Comment L9-4 Not cross referenced.

EPIC contends that the Board has failed to satisfy these requirements, as discussed below.

II. THE REGULATIONS FAIL TO SATISFY THE INTENT OF THE STATUTE

A. The Regulations Fail to Provide Essential Standards.

AB 904 expressly declares that the “working forest management plan shall comply with rigorous timber inventory standards.” (PRC § 4597(a)(5)). These standards are needed to ensure the long-term benefits outlined in the statute, including “added carbon sequestration,” “sustainable production of timber and other forest products,” and “the maintenance of ecosystems processes and services.” Yet, the proposed regulations fail to identify any “rigorous timber inventory standards.” In fact, the proposed regulations do not provide any clearly stated timber inventory standards. While proposed rule 1094.6 requires “description” of “inventory design and standards,” including types of projections or models used to make projections of growth and yield, (subsection (f)), or “inventory design and timber stratification criteria” to support growth and yield calculations used to determine LTSY, (subsection (g)), these provisions do not provide any actual standard, much less a “rigorous” timber inventory standard, that must be satisfied. In fact, in doing a search of the entire proposed rule package, there is not one reference to “inventory standard,” or “timber inventory.” Thus, the rules fails to meet the required APA standards, and in the absence of clear statement of the required “rigorous inventory standards,” there is a serious question as to whether these rules, as currently drafted, can even satisfy the APA authority, necessity and consistency standards.

Comment [TB30]: Comment L9-5. Not cross referenced.

The proposed rules also fail to provide clear definitions for the “long-term benefits” the rigorous timber inventory standards are intended to ensure. For example, the proposed rule package fails to define or give interpretation to the terms such as “added carbon sequestration,” “sustained production of timber and other forest products,” or “maintenance of ecosystems processes and services.” (PRC §4597(a)(5)). This failure contributes to the legal deficiency of the rule package, by not providing necessary interpretation of core statutory provisions.

Comment [TB31]: Comment L9-6. Not cross referenced.

Proposed rule 1094.6 states that a “function” of the WFMP is to “provide information and direction for timber management so it complies with*management objectives of the landowner(s)*.” (Emphasis added). AB 904 says nothing about landowner management objectives. Introducing this provision to guide the WFMP, while failing to provide the statutory “rigorous timber inventory standards,” or definition of stated objectives, is contrary to the statute and not authorized. As such, it violates the APA. Moreover, the proposed regulations place no definition on what may constitute landowner’s “management objectives.” There is nothing “rigorous” about allowing a landowner’s unbridled management objectives to define timber management as contemplated by AB 904. This too violates the APA due to a lack of authority and consistency.

Comment [TB32]: Comment L9-7. Not cross referenced.

The proposed rules, and specifically rule 1094.6, do not require an express statement and identification of “long term sustained yield.” While there are provisions that require submission of information as to how the plan submitter estimates LTSY, there is no plain requirement for the WFMP submitter to *state* the LTSY. Nor is there any provision which stipulates that the WFMP submitter must conduct uneven aged management to reach LTSY, or to maintain LTSY. The ISOR advises that this rule package is intended to “incentivize” uneven aged management (ISOR at p. 4), yet the rules themselves do not provide any clear incentive much less a requirement to conduct uneven aged management over time, into the future, or upon realization of the (unstated) LTSY. This is yet another reason why the proposed rules are not authorized by statute, and do not satisfy the intent and purpose of AB 904, e.g., to provide “increased productivity of

Comment [TB33]: Comment L9-8. Not cross referenced.

Comment [TB34]: Comment L9-9. Not cross referenced.

timberland” and achieve the long-term objective of an “uneven aged timber stand and sustained yield through implementation of a working forest management plan.” (PRC §§ 4597(a)(3), 4597.2).

Comment [TB35]: Comment L9-10, not cross referenced.

Additionally, the rules lack any metric to evaluate, consistently over time, whether statutory goals for “sustained production of timber” and “sustained yield” are being achieved. (PRC §§ 4597, 4597.2). Specifically, the rules fail to require regular and ongoing reporting of volume harvested and volume remaining, for at least tree size, species, and stands. In order to achieve sustainability, the volume removed—such as Scribner volume, cubic or board feet – must be recorded to determine whether estimates for removal are being followed. It is also necessary to provide regular reporting of emerging growth, in order to evaluate whether growth projections for the LTSY are accurate or need adjustment. This is needed entirely independent of any Five Year Review for compliance; it is needed to ensure that the purposes of the WFMP are being fulfilled over time.

Comment [TB36]: Comment L9-11. Add volume reporting requirement in 1094.6 (p) or to 1094.8?

The failure to provide these key provisions in the proposed rules mean that not only has the APA not been followed, but equally CEQA requirements have not been met. The ISOR summarily concludes that the proposed rule package will not result in significant adverse environmental effects. (ISOR at p. 106). This is insufficient based on the potential for real harm due to the lack of “rigorous timber inventory standards,” clear statement of LTSY, measures to ensure use of uneven aged management over time, and adequate recording and monitoring of volumes harvested and growth occurring. The lack of these measures means, simply, that WFMPs and their implementation, have the very real potential to cause significant adverse effects on the environment, and particularly timberland productivity and inventories over time, which in turn can adversely impact many natural resources.

Comment [TB37]: Comment L9-12 Not cross referenced.

The proposed rules and the ISOR do not appear to encompass real consideration of baseline conditions with regard to the status and plight of threatened and endangered species, nor do the proposed rules or the ISOR adequately address how forest management under the guise of a WFMP may affect these conditions and trends. There is an inherent presumption that the proposed rules will not have a significant adverse impact on the environment (*See* ISOR at p. 106). Furthermore, as described in more detail below, the proposed rules do not contain adequate standards or safeguards regarding the identification and protection of threatened or endangered species within the WFMP assessment area.

There are numerous examples of forest-associated species that are currently listed as threatened or endangered and that are well-known to be in decline based on the best available science and research that may be adversely affected by the lack of adequate standards and mitigations in the proposed rules.

Comment [TB38]: Comment L9-13. Not cross referenced.

One well-known species that is experiencing well-documented declines in vital demographic statistics is the Northern Spotted Owl (“NSO”). The latest range-wide demographic study for the NSO (Forsman et al. 2011) (Attachment B), documents declines in reproduction, apparent survival, and overall populations in most study areas. Forsman et al. (2011) concludes that past and ongoing habitat loss, combined with increased competition from non-native invasive barred owls are partially responsible for these declines. (Forsman et al. 2011; Abstract).

Anadromous salmonid species in California, particularly in coastal watersheds, are similarly in peril. For example, the National Marine Fisheries Service’s (“NMFS”) Final Recovery Plan for

the Southern Oregon/Northern California (“SONCC”) Evolutionary Significant Unit (“ESU”) of Coho salmon (National Marine Fisheries Service 2014) (Attachment C) notes that literally thousands of Coho once returned to Northern California and Southern Oregon rivers and streams, but that today, over three quarters of SONCC Coho salmon independent populations are at high risk of extinction. (NMFS 2014, at p. E-2). The 2014 SONCC Coho recovery plan includes and assessment of the 2010 Anadromous Salmonid Protection Rules (“ASP”) which currently regulate timber harvest activities on private ownerships within the range of the SONCC Coho. NMFS staff actively engaged and participated in BOF meetings and expressed concern to the BOF that the ASP rules, while resulting in some improvements to riparian protections, would not adequately protect anadromous salmonids until several inadequacies in the Forest Practice Rules were addressed (NMFS 2009). NMFS identified several weaknesses in the existing ASP rules, including the failure to address rate-of-harvest. The NMFS Final Recovery Plan for the SONCC Coho states:

In addition, NMFS believes the use of scientific guidance will provide additional limitations on the rate of timber harvest in watersheds to avoid cumulative impacts of multiple harvests, and provide greater protections to ensure the integrity of high gradient slopes and unstable areas. This may include limiting the areal extent of harvest in such areas. (NMFS 2014, at p. 3-55).

While the Board of Forestry continues to fumble around with its feeble attempts to tweak the language contained in Technical Rule Addendum No. 2 (cumulative impacts assessment), the Board is missing the larger picture related to the causes of, and the need to further regulate, the cumulative impacts of timber harvest activities on properly functioning habitat conditions for Coho and other listed salmonids.

More recently, another forest-associated species has been proposed for listing under the federal Endangered Species Act (“ESA”) by the U.S. Fish and Wildlife Service (“USFWS”). The USFWS has proposed listing of the Pacific Fisher as a “threatened” species under the ESA. In its 2014 Species Assessment Report for the Pacific Fisher, the USFWS cites large-scale loss of important habitat components for the fisher due to past ‘vegetation management’ and timber harvest, and current ‘vegetation management’ activities. (USFWS 2014 at p. 55). (Attachment D).

Finally, past and contemporary forest management have had a devastating impact on the federal-threatened and state-endangered Marbled Murrelet. Raphael et al. (2011) in Northwest Forest Plan—the first 15 years (1994–2008): status and trend of nesting habitat for the Marbled Murrelet (Attachment E) estimated a loss of about 13 percent of the higher suitability habitat present at baseline, (1994—Advent of Northwest Forest Plan) over this same period. Fire has been the major cause of loss of nesting habitat on federal lands since the Plan was implemented; timber harvest is the primary cause of loss on non-federal lands. (Raphael et al. 2011 at Abstract). The Marbled Murrelet is well-known to primarily rely on old growth and late successional forest types for its survival. Raphael et al. (2011) shows that habitat for the Marbled Murrelet continues to decline, and that this species continues to be in great peril.

Neither the proposed rules themselves, nor the ISOR describing the rules appear to consider the potentially significant adverse individual or cumulative effects of forest management activities to be permitted under the WFMP regulations on these species, and fail to describe reasonable alternatives that would minimize or substantially lessen such impacts in violation of CEQA.

EPIC proposes that the Board return to the committee to draft regulations which include provisions needed, as outlined herein.

Comment [TB39]: Comment L9-14 Not cross referenced.

B. The Proposed Regulations Fail to Define Several Terms Which Require Definition.

The proposed regulations lack clarity and consistency because of the failure to define essential terms. These include those terms identified above – added carbon sequestration, sustainable production of timber and other forest products, maintenance of ecosystem processes and services, and rigorous timber inventory standards. (PRC § 4597(a)).

In addition, there are terms used in the proposed rules which have not been defined, and are not clear in their use. These include:

- “forestland stewardship” (1094.3);
- “management objectives of the landowner(s)” (1094.6);
- “baseline conditions” (1094.6(f)(1));
- “timber volume” (1094.6(g));
- “similar requirements” (1094.6(i));
- “LTSY plan” (1094.6 (m)(1));
- “address” (1094.6(n));
- “necessary deviation” (1094.8);
- “physical environmental changes” (1094.8(h));
- “significant changes” (1094.16(d)(1)); and
- “proprietary information” (1094.29(e)).

All of these terms require definition in order to understand their specific meaning, as well as the rule or rule provision which uses these terms. Without definition, the rules which use these terms do not satisfy the APA standard of clarity. Moreover, as ambiguous terms, they may not protect the environment, because to the extent any one or all of them are intended to act as a requirement, that requirement cannot be satisfied without a definition. Thus, the lack of definition contributes to the failure to adequately evaluate potential significant adverse environmental effects, define mitigation, and evaluate feasible alternatives – all in violation of CEQA.

Comment [TB40]: Comment L9-15. Refer to volume discussion on page 16, line 12 and the issue of “proprietary”.

III. THE REGULATIONS VIOLATE APA STANDARDS AND CEQA.

The following are comments on specific provisions of the rules which EPIC believes illustrate the lack of APA and CEQA compliance. Here EPIC focuses on what it believes are key substantive provisions which must be changed and amended before they can be adopted.

A. The Proposed Rule Specifying WFMP Content Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

In reviewing the proposed WFMP content rule, 1094.6, EPIC identified six substantive areas which we believe require changes in order to satisfy the APA and CEQA standards articulated above. These are: (1) LTSY, (2) water quality, (3) wildlife and protected species, (4) cultural and

historic sites, (5) cumulative impacts analysis, and (6) use of exceptions to standard rule requirements. For all of the provisions identified below, the ISOR failed to provide a reasonable and adequate discussion of potential significant adverse impacts, or necessary mitigation, or considered alternatives that could have eliminated or substantially reduced these potential effects, in violation of CEQA.

Comment [TB41]: Comment L9-16Not cross referenced.

1. Long Term Sustained Yield

To begin, EPIC reiterates that a major flaw in the proposed rules is the failure to require an express statement of long term sustained yield. This is compounded by the failure to require an express statement to show how uneven aged management over time will be used and implemented. In addition, the following subsections are insufficient and require changes, as recommended here.

Comment [TB42]: Comment L9-17, see Comment L9-8. Not cross referenced.

Subsection (f) requires a description of the “planning horizon associated with the estimate of LTSY,” and “the period of time necessary to estimate achievement of LTSY.” As worded, neither of these provisions are clear as to what is meant by the “estimate” for “achievement” of LTSY. Does determination of LTSY depend on merely an estimate, unknown at the time of WFMP approval? If that is so, the regulations need to identify the controls in place to ensure the WFMP objectives toward sustainability and uneven aged management will be achieved. We could find no requirement that the WFMP plainly state the time needed to achieve actual LTSY. This subsection must be clarified to have meaning, and provide better standards to specify LTSY. In the absence of controls, this provision leaves room for unrealistic estimates for achievement of LTSY, and does not provide for increased productivity of timberlands, or protection of resources – in violation of the APA. And the ISOR fails to evaluate the potential for significant adverse impacts to resources from the lack of definition and controls.

Comment [TB43]: Comment L9-18Not cross referenced. 1094.2 defines LTSY (c) “Long Term Sustained Yield (LTSY)” , pursuant to PRC § 4597.1(a), means the average annual growth sustainable by the inventory predicted at the end of a 100-year planning horizon, or a shorter planning horizon if the forest encompassed by the WFMP has reached a balance between growth and yield.

Subsection (g) requires a description of inventory design and timber stand stratification criteria which show that the projected inventory supports the growth and yield calculations used to determine LTSY “by volume.” “Volume” is never defined, so there is no clarity to the term “LTSY by volume.” Volume can be Scribner volume, board foot or cubic volume, or basal area volume. This must be clarified to provide uniformity in determining LTSY. Subsection (g) also provides three “minimum standards” which must be satisfied in the required description of inventory criteria. While (1) and (2) appear relatively straightforward, subsection (3) introduces further ambiguity, as it requires projections of LTSY “and volumes available for harvest,” without defining what kind of volume (e.g., Scribner, board or cubic foot, or basal area) is being projected. It also provides that the projections for LTSY and volumes available for harvest by Stand or Strata shall be “aggregated for the area covered by the WFMP to develop the LTSY estimate.” This is unclear. Stands grow at different rates, density, with different competition and site qualities. All may be different from one stand to the next, from one strata to the next, all within the area covered by one WFMP. “Aggregating” does not take these differences into account and may result in skewed LTSY projections. This could result in failing to meet the statutory WFMP objectives, accompanied by adverse environmental impacts on resources such as timber, water quality, and protected species. Yet potential impacts of this language have not been analyzed are required by CEQA. These provisions must be fully defined and interpreted so as to protect timber and natural resources.

Comment [TB44]: Comment L9-19, see Comment L9-11. Not cross referenced.

Subsection (h) lacks clarity because, while it requires a description of the property and planned activities, it does not provide a time frame for those projections. Thus, for example, while

Comment [TB45]: Comment L9-20. 1094.6(g)(3), clarify?

requiring information about the “projected timber volumes and tree sizes to be available for harvest,” there is no requirement to identify the time frame for these expected harvest potentials. Is this on an annual basis? For how many years? This is necessary information to understand the accuracy and effectiveness of projected LTSY. Subsection (h) does not define a time frame for projected volumes and tree sizes. The WFMP is permitted to extend into perpetuity; if perpetuity is the time frame then a statement that identifies reliable projected volumes into perpetuity is required. To be clear and consistent with the objectives of the statute, a defined metric should be articulated to monitor the volume and tree size projections over time. If projections into perpetuity are not the metric, then a realistic time frame must be established, at the end of which the WFMP must be reviewed for conformance to the projections.

Comment [TB46]: Comment L9-21. Not cross referenced.

Subsection (h) also places no limits on the type of silvicultural method to be applied, even though the statute is clear that the WFMP is intended to achieve “uneven aged timber stand and sustained yield.” PRC § 4597.2. Indeed, nowhere do the regulations actually limit or restrict silvicultural methods to uneven-aged management. This is contrary to the plain language of the statute to achieve uneven aged management.

Comment [TB47]: Comment L9-22, Not cross referenced. See Comment L9-9.

Subsection (m) requires information for management units, including identification of the acres and estimated growth and yield for each planned harvest entry covering the period of time necessary to meet growth and yield objectives. The regulations do not require the WFMP to plainly state the period of time necessary to achieve growth and yield. This can have adverse environmental impacts because the WFMP is a perpetual plan, and without required time frames, adherence to the policies to ensure protection of the environment, such as sustained production of timber and other forest resources, may be forestalled.

Comment [TB48]: Comment L9-23, see Comment L9-18.

To further illustrate the lack of clarity for LTSY, subsection (p) requires the WFMP to describe “a future schedule of inventory sampling and analysis of LTSY.” We interpret this provision to provide some kind of monitoring measure to evaluate the LTSY projections as the WFMP is implemented. However, there is no requirement here, or elsewhere, that specifies the *time frame* for such a schedule of inventory sampling and analysis of LTSY. In the absence of any meaningful time frame, this measure fails to provide the necessary structure to ensure that LTSY and sustained yield is being achieved. Moreover, there is no provision here or elsewhere which requires disclosure of volumes actually harvested, as opposed to “projections” of yield. This information is necessary to ensure that LTSY - and thus the WFMP objective for sustainability - is being achieved. Absent this, the subsection undermines and obfuscates the legislative directive and threatens ecological processes.

Comment [TB49]: Comment L9-24, see Comment L9-11. Not cross referenced.

2. Water Quality Protection

Subsection (h) fails to require information about *potential* erosion sites, even though such disclosure and analysis should be readily available upon an adequate field inspection. This failure leaves the proposed rules in direct conflict with requirements of the recently-adopted “Road Rules” package. This oversight raises the potential for significant adverse environmental effects from this regulation which has not been evaluated in the ISOR as required.

Comment [TB50]: Comment L9-25, see options associated with 1094.6(i).

Subsection (h) authorizes reliance on so-called “similar requirements of other applicable provisions of law” in lieu of providing the required description of methods used to avoid significant sediment discharge to watercourses. However, in the absence of a definition for

“similar requirements,” this exemption renders the provision unclear and ambiguous, and may result in significant adverse impacts to the environment which are not analyzed in the ISOR.

Comment [TB51]: Comment L9-26.
1094.6(i), clarify?

3. Protection of Wildlife and Other Vulnerable Listed Species

Subsection (l) requires disclosure only of “known locations” of listed or protected plant and animal species and their key habitats. This is insufficient, and fails to meet the statutory objective to maintain ecosystem processes (PRC § 4597(a)(5)), and protect fisheries and wildlife habitats (PRC § 4597.1(j)). There is no requirement to conduct an investigation or protocol surveys to determine the *presence* of protected and listed species or their habitat. This is an omission that must be corrected to ensure that the WFMP satisfies the legislative intent and does not cause adverse impacts to protected and listed species.

Comment [TB52]: Comment L9-27.
Not cross referenced.

Subsection (n) provides standards for LTSY projections which project a reduction in trees greater than 12 inches dbh or reduced inventories of Major Stand Types or for a percentage of Stands or Strata. In those circumstances, the WFMP must provide an “assessment” which “addresses” listed and protected species and their habitat needs. It is entirely unclear what it means to “address” these resources. If the intent is to ensure that these vulnerable species are protected when tree size and quantity are significantly reduced, then the regulation must provide standards to ensure protection. In the absence of having to actually look for species subsection (l), merely “addressing” these vulnerable species is not sufficient. Absent some standard to credibly evaluate potential impacts from reduced tree and stand size, this provision poses threats to protected and listed species and their habitat needs which constitutes a potential significant environmental effect which has not been analyzed or mitigated as required by CEQA and Board rules.

Comment [TB53]: Comment L9-28.
Not cross referenced.

As described above, both past and contemporary forest management are important factors contributing to the decline of many threatened and endangered fish and wildlife species. The lack of clarity and adequate standards in the proposed rules has the potential to result in significant adverse individual and cumulative effects to these species and their habitats. The proposed rules and the ISOR describing the rules fail to provide a mechanism for analysis of, disclosure of, and mitigation to insignificance of potentially significant adverse impacts to threatened and endangered species and thus violate CEQA.

Comment [TB54]: Comment L9-29 Not cross referenced.

4. Failure to Ensure Protection of Archeological, Cultural, and Historic Sites

Subsection (q) suffers from the same inadequacy as for protected species. By only requiring description of “known” cultural or historical resources, the WFMP fails to ensure protection for these resources. Surveys and field investigations should be required.

Comment [TB55]: Comment L9-30. Reference to 1094.6(q). Add WFMP to 929(b). WFMP must be in compliance with 929 et seq pursuant to 1094, in which the following statement is provided: “Where the abbreviation THP, the term Timber Harvesting Plan, or the word plan is used in Chapter 4, Subchapters 1 through 6 and Chapter 4.5 it shall also mean Working Forest Management Plan as specified in PRC § 4597 et seq. In Subchapter 7 this equivalency will occur for all sections except 1032.7 through 1042 that are not referenced in this Article, or as otherwise specified.”

5. Lack of Cumulative Impacts Analysis in WFMP

Subsection (w) is confusing because it simply requires the WFMP to include a “description of the cumulative impacts analysis.” The WFMP must provide a cumulative impacts assessment pursuant to Technical Rule Addendum No. 2. (14 CCR § 898; 14 CCR 912.9). Yet the proposed subsection permits the WFMP to include only a description of that analysis. The full analysis as required by the Forest Practice Rules and CEQA must be included in the WFMP, and any requirement less than that violates the Forest Practice Act and CEQA.

Comment [TB56]: Comment L9-31.
Not cross referenced.

6. Allowance for Exceptions to Standard Requirements Places Resources at Risk

Subsections (y) through (z), (bb) through (ee), and (ii) are provisions to authorize exceptions to standard FPA rule provisions in certain circumstances. These subsections are unclear as to whether they are intended to apply to the entire area covered by the WFMP, identified Management Units, or only to specified location stated in the WFMP. Such exceptions appear contrary to the Legislative intent and purpose of the WFMP; authorizing the WFMP to utilize exceptions and alternative practices for all time poses a real – and unanalyzed – threat to the environment. Moreover, permitting exceptions for all time is contrary to the Legislative intent to encourage prudent and responsible forest management – with increased productivity of timberland. (PRC § 4597(a)(1), (3), (5)).

These subsections are contrary to the APA standards for necessity, consistency and clarity, and have not been properly evaluated pursuant to CEQA. They pose the risk, over time, of causing significant adverse environmental effects. These exceptions, for example, if they are to be allowed as permanent standards, must be assessed in the context of the best science detailing what our forests can expect in 10, 20, 30 and 50 years from now due to climate change and other conditions.

Subsection (ii) authorizes certain exceptions, for tractor operations on steep and unstable slopes and lands, roads and skid trails to be located in watercourse zones, to be approved as “standard operating practices.” This standardized ‘permission’ has not been properly analyzed under CEQA for the potential for significant impacts. It permits use of an undefined “deviation,” with alternative mitigation to be incorporated into the WFMP—without any mention of public review and comment. Mitigation is required to remedy significant environmental impacts. If there is a need for mitigation, there is a need for CEQA review. This provision ignores that requirement, and its process is contrary to the APA and CEQA.

Comment [TB57]: Comment L9-32. Not cross referenced.

B. The Proposed Rule for WFMP Annual Notice Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

The WFMP is to be implemented through submission of an annual notice, which permits operations immediately upon submission. (PRC § 4597.11; proposed rule 1094.8.) Like the WFMP, it must be a public record. As identified above, terms in the provisions for the WFMP Notice are not defined. The proposed annual Notice requirement also does not require information to document what has already occurred to implement the WFMP or to identify new conditions or potential impacts. In this way, the Notice does not provide a clear statement of the information needed to ensure that the Legislative intent to encourage increased productivity of timberlands (PRC § 4597(a)(3)), and to establish uneven aged management and sustained yield through the implementation of the WFMP. (PRC § 4597.2).

Comment [TB58]: Comment L9-33. Not cross referenced.

At the outset, the proposed Notice rule directs that “[a] necessary deviations shall be approved by the Director prior to submission” of the Notice. The proposed rule does not define what constitutes a “necessary” deviation, and whether a “necessary” deviation is a substantial, minor or some other kind of deviation. The proposed rule also does not define who decides what a

necessary deviation is or what process the Director must use to approve a “necessary” deviation. This provision lacks clarity.

Comment [TB59]: Comment L9-34. Not cross referenced.

The proposed Notice provisions suffer from many of the same defects as in the proposed WFMP content rule. For LTSY and sustained yield, the proposed Notice rule lacks any disclosure of volumes and tree sizes available for harvest. This information is necessary to document what has occurred, and what timber operations have been or are proposed to be conducted to achieve the long-term objective of uneven aged management and LTSY. The WFMP requires a one-time description of projected timber volumes and tree sizes to be available for harvest and frequencies of harvest. (PRC § 4597.6(h)). The annual Notice, to be meaningful, needs to provide an annual record toward and update to those projections, to evaluate WFMP compliance. While subsection (l) requires a statement that the Notice conforms to the provisions of the WFMP, it does not require data to support this conclusion. That statement must be based upon actual substantial evidence. At a minimum, the Notice should include a statement identifying what volumes and tree sizes are available for harvest, in relation to the WFMP projections, and evidence documenting efforts to achieve the LTSY.

Comment [TB60]: Comment L9-35. Not cross referenced.

For wildlife and protected species, subsection (g) requires only review of public sources and databases to report whether there are any “known” occurrences of these species. While this subsection does refer to a species which has or has not been “discovered” there is no affirmative duty to conduct a protocol survey or other investigation to look for these protected species. This is necessary to fulfill the legislative intent to promote forestland stewardship which protects fisheries and wildlife habitats. (PRC § 4597.1(j)).

Comment [TB61]: Comment L9-36. Not cross referenced.

Similarly, subsection (f) permits a statement that no archaeological sites have been discovered, without a corresponding duty to conduct some kind of survey to determine if such sites do exist.

Comment [TB62]: Comment L9-37. Reference to 1094.8(f), see Comment L9-30.

Subsection (h) requires a statement, based on a field evaluation, that “there are no physical environmental changes” in the Notice area “that are so significant as to require any deviation of the WFMP.” The proposed rule do not define what is meant by “physical environmental changes” and what that term may encompass. The lack of definition makes this subsection confusing and without clarity, as no thresholds are provided. The provision is also unclear because earlier in the proposed rule it is clear that there can be no outstanding “necessary deviations” once the Notice is submitted. Whether “necessary deviations” means the same as or something different from “physical environmental changes” is not known, adding to the confusion. Since the submission of the Notice permits operations to commence immediately, in the absence of clear standards or thresholds, there is no ability to evaluate whether the statement is accurate. As with other provisions, evidence must be provided which documents that a field evaluation was conducted of the entire area covered by the Notice, and documents the conditions observed during the field evaluation.

Comment [TB63]: Comment L9-38. Not cross referenced.

For water quality protection, subsection (m) is good because it, unlike so much else, requires an “updated” erosion control implementation plan. However, it too does not require any actual evidence upon which conclusions as to *current* conditions are based. The mapping requirement under subsection (s)(10) perpetuates the deficiency in the WFMP - to require mapping only of “known” unstable areas or slides, rather than also documenting locations which are potentially unstable or at risk. This must be expanded to require identification of “potential” unstable areas.

Comment [TB64]: Comment L9-39. Not cross referenced.

Comment [TB65]: Comment L9-40. Not cross referenced.

Subsection (r) requires description of the WFMP exceptions which have “standard operating practices,” without requiring evidence or data that documents the continued justification for such exceptions. The Notice rule should include a requirement for some evidence to justify the continued need for the exceptions.

Comment [TB66]: Comment L9-41.
1094.8 (r), comment is unclear because this provision does not mention exceptions?

The proposed Notice regulation does not require a statement disclosing whether there are any ongoing operations in the WFMP area. As a result, it is unclear to what extent more than one, or several, areas within the WFMP may be under operation in any given year. This poses the potential for significant cumulative impacts which would need to be evaluated, yet there is no requirement for the disclosure or evaluation of multiple operations.

Comment [TB67]: Comment L9-42.
1094.8, include provision requiring disclosure of any ongoing operations in the WFMP area?

C. The Proposed Rule For Substantial Deviations Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

Proposed rule 1094.23 outlines the circumstances under which a change to the WFMP shall be deemed a “substantial deviation.” Subsection (c) provides examples of such deviations, including “[c]hange in location of timber harvesting operations or enlargement of the area or *volume planned to be cut*.” (Emphasis added). However, no threshold for a change in the “volume planned to be cut” is included. A threshold must be established, such as the 10% standard used for a Sustained Yield Plan in section 1091.13(a).

Comment [TB68]: Comment L9-43.
1094.23(c)(1), include a threshold associated with the volume planned to be cut (e.g. 10%)?

In addition, this subsection also reveals the lack of an effective annual monitoring component that documents the volume cut in any given year. This reporting is necessary to keep track of what volumes may be cut going forward, and to determine whether the growth and yield projections are accurate or need adjusting to maintain LTSY.

Comment [TB69]: Comment L9-44.
Not cross referenced.

D. The Proposed Rule for Stocking Standards Fails to Meet the Intent of the Statute and Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

The Legislature authorized the WFMP as a tool to achieve “increased productivity of timberland.” (PRC § 4597(a)(3)). Proposed rule 1094.27 (a) is inconsistent with this intent because it permits stocking to be satisfied using minimum stocking standards, rather than require an increase in productivity over time. To “increase productivity” means to require a standard higher than just “maintaining” minimum stocking standards, which is what subsection (a) authorizes. This is not authorized by the WFMP statutes, and was not analyzed in the ISOR for its potential to cause significant adverse environmental impact to the environment. This will not “benefit” the environment, and as the potential to degrade the environment by not doing as contemplated by the Legislature – to increase timberland productivity and utilized uneven aged management.

Comment [TB70]: Comment L9-45.
Reference to 1094.27(a). Not cross referenced.

E. The Proposed Rules for the Five Year Review is Inconsistent with the Statute and Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

Proposed rule 1094.29 sets forth provisions for what is called a “Five (5) Year Review of the WFMP” (“5-Year Review”). This section is not clear, particularly as to the contents of the summary and 5-Year Review. The Legislature directed the board to adopt regulations for this specific section, and the proposed regulation fails to meet this duty, satisfy APA standards of clarity, or ensure CEQA compliance.

First, the proposed rule is not consistent with the statute, Public Resources Code section 4597.12. By statute, the Department is to first develop a summary, and then conduct the 5-Year Review. (PRC § 4597.12(b) [“develop a plan summary *before each five-year review*”]). (Emphasis Added). Proposed rule 1094.29 (a) and (b) make a mishmash of this clear process, obfuscating when the summary is done in relation to the 5-Yer Review.

Comment [TB71]: Comment L9-46.
Not cross referenced.

Second, the proposed rule fails to be clear as to the public’s right of review. The statute provides that the public shall have a right to review the summary and provide comment for the 5-Year Review. (PRC § 4597.12(c)). However, joining in subsection (b) the “summary” and development of the 5-Year Review, the proposed rules deprive the public of its 30-day right of review as contemplated in subsection (a). The public must be given an adequate period of review for the summary, to provide input into what information the review team agencies and the Department need to consider in conducting the 5-Year Review. And, the public should be given a right to comment upon whatever document encompasses the 5-Year Review.

Comment [TB72]: Comment L9-47.
Not cross referenced.

Third, the rules are not clear as to what is to be included in the “summary” preceding the 5-Year Review, or what shall be included in the 5-Year Review. If the summary is the document from which the 5-Year Review is to be conducted, a clear statement is necessary in order for the public to exercise its role to present “additional information relevant to the purpose of the five (5) year review,” as stated in subsection (a). And the required contents for a 5-Year Review must be delineated.

Comment [TB73]: Comment L9-48.
1094.29(b), make specific what is to be included in the summary?

It is unclear whether a 5-Year Review will include the information outlined in subsections (b) or (c) , i.e., number of WFMP Notices, the acreage operated under each WFMP Notice, the violations received, the volume harvested in relation to projections of harvest in the WFMP. The only information that the review team is actually required to analyze is “significant episodic events occurring during the previous 5 years.” (1094.29(c)). The proposed rule needs to be clear as to what is to be included in the 5-Year Review and whether it is only a “summary” or something more. The proposed rule needs to specifically identify what information must be reviewed by the review team and be made equally available for public review.

Comment [TB74]: Comment L9-49.
Reference to 1094.29(c). Not cross referenced.

Subsection (d) provides three distinct and valid reasons why the Department “shall provide written comments that a review of the WFMP content and procedures may be necessary”: (1) notices of violation have been issued; (2) the 5-Year Review indicates potentially significant adverse impacts to the environment may occur from continuance of the WFMP; or (3) the Department is presented with a fair argument that a project may have a significant adverse impact on the environment. However, the subsection provides no standards or process for the “review of the WFMP content and procedures.” These are required, to make the proposed rule meaningful and clear. It is unclear if this subsection is referring to the “5-Year Review,” or something else. The proposed rule is also not clear as what process the Department uses to “confer” with the Designated Agent. This provision must be clarified, and the process must be transparent and subject to public review.

Comment [TB75]: Comment L9-50.
Reference to 1094.29(d). Not cross referenced.

Subsection (e) is a restatement of the subsection (d) of the statute. (PRC § 4597.12 (d)). However, it conflicts with other provisions of the statutory scheme and proposed rules. The WFMP “shall be a public record.”(PRC § 4597.2; proposed rule1094.3). That means all the information identified in proposed rule 1094.6 is a public record. Similarly, the WFMP Notice is a public record. (PRC § 4597.11, proposed rule 1094.8). The 5-Year Review is based upon a

review of this public information. Subsection (e) authorizes a WFMP landowner to prevent public disclosure of “proprietary information.” Permitting a landowner to not disclose *undefined* information, which is completely relevant to a determination of WFMP compliance, is contrary to the fundamental premise of the Forest Practice Act and CEQA to require public access and review.

Comment [TB76]: Comment L9-51.
Reference to 1094.29(d). Not cross referenced.

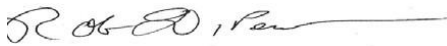
CONCLUSION

The proposed WFMP rules are inconsistent with the enacting statute by failing to provide “rigorous timber inventory standards,” and fail to comply with basic CEQA and APA requirements. The proposed rules are inadequate to ensure LTSY, and are inadequate to provide for wildlife and water quality protection and enhancement. EPIC therefore recommends that the proposed WFMP implementing rules be remanded back to the Management Committee for additional work to address the deficiencies identified.

Comment [TB77]: Comment L9-52 Not cross referenced.

EPIC appreciates the opportunity to provide these comments, and requests a written response. Please do not hesitate to contact me at the number provided below should there be questions.

Sincerely,



Rob DiPerna
California Forest and Wildlife Advocate

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Enc. – See Attachments List

Attachments

Attachment A: EPIC Letter regarding WFMP Draft Regulations to Management Committee. April 7, 2014.

Attachment B: Forsman, E.D., R.G. Anthony, K.M. Dugger, E.M. Glenn, A.B. Franklin, G.C. White, C.J. Schwarz, K.P. Burnham, D.R. Anderson, J.D. Nichols, J.E. Hines, J.B. Lint, R.J. Davis, S.H. Ackers, L.S. Andrews, B.L. Biswell, P.C. Carlson, L.V. Diller, S.A. Gremel, D.R. Herter, J.M. Higley, R.B. Horn, J.A. Reid, J. Rockweit, J. Schaberel, T.J. Snetsinger, and S.G. Sovern. 2011. Population Demography of the northern spotted owls: 1985-2008. Studies in Avian Biology.

Attachment C: National Marine Fisheries Service. 2014. Final Recovery Plan for the Southern Oregon/Northern California Coast Evolutionarily Significant Unit of Coho Salmon (*Oncorhynchus kisutch*). National Marine Fisheries Service. Arcata, CA.

Attachment D: U.S. Fish and Wildlife Service, 2014b. Draft Species Report Fisher (*Pekania pennanti*), West Coast Population. January 13, 2014.

Attachment E: Raphael, Martin G.; Falxa, Gary A.; Dugger, Katie M.; Galleher, Beth M.; Lynch, Deanna; Miller, Sherri L.; Nelson, S. Kim; Young, Richard D. 2011. Northwest Forest Plan—the first 15 years (1994–2008): status and trend of nesting habitat for the marbled murrelet. Gen. Tech. Rep. PNW-GTR-848. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 52 p.



Keeping Northwest California wild since 1977

Sent via e-mail to george.gentry@fire.ca.gov on date shown below

April 7th, 2014

Mr. Stuart Farber, Chair
Management Committee
California Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244

Re: EPIC comments regarding proposed regulatory language for implementation of Assembly Bill 904 “Working Forest Management Plan”

Dear Chairman Farber and Committee Members:

The Environmental Protection Information Center (EPIC) has reviewed a “February 17, 2014 Draft” set of regulations for the “Working Forest Management Plan,” hereinafter referred to as “Draft Regulations.” We believe it is important that the implementing regulations provide an adequate structure for AB 904’s goal to ensure long term benefits and require rigorous timber inventory standards for non-industrial landowners who may choose to develop the “Working Forest Management Plan” (WFMP). In an effort to assist in achieving the legislation’s intent, EPIC provides the following comments and suggestions for development of regulations to implement AB 904.

It is equally important that the implementing regulations provide for documentation of conditions in a manner that is consistent with common & current professional practice and organization for planning documents. This includes documentation of conditions and recovery measures necessary for compliance with the laws which AB 904 identifies as requiring compliance, including CESA, CEQA and Porter-Cologne Water Quality Act.

I. Legislative Intent Must Guide Development of Regulations.

The WFMP is intended “[t]o ensure *long-term benefits* such as *added carbon sequestration*, local and regional employment and economic activity, *sustainable production of*

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timber and other forest products, aesthetics, and the maintenance of ecosystem processes and services,” and thus “shall comply with *rigorous timber inventory standards* that are subject to periodic review and verification.” PRC § 4597(a) (5), emphasis added. The Legislature specifically requires that the governance of the WFMP “shall be implemented in a manner that complies with the applicable provisions of this chapter and other laws, including, but not limited to, the Timberland Productivity Act of 1982 (Chapter 6.7 (commencing with [Section 51100](#)) of [Division 1 of Title 5 of the Government Code](#)), the California Environmental Quality Act (Division 13 (commencing with [Section 21000](#)) of the [Public Resources Code](#)), the Porter Cologne Water Quality Control Act (Division 7 (commencing with [Section 13000](#)) of the [Water Code](#)), and the California Endangered Species Act (Chapter 1.5 (commencing with [Section 2050](#)) of the [Fish and Game Code](#)).” *Id.* (b). These important requirements are not included in the NTMP statute. *See* PRC § 4593.

AB 904 authorizes the Board of Forestry to not only adopt regulations for specific sections, but also to adopt any regulations “needed to implement this article . . .” PRC § 4597.20. It is therefore very important to develop provisions which implement the WFMP statute, and are not largely only a regurgitation of the existing NTMP regulations, as they would be insufficient to implement the statute.

Our comments first identify the statutory provisions which require interpretation and guidance and how in our view the Draft Regulations have or have not provided this interpretation and guidance. We then provide a review of specific provisions of the Draft Regulations which have not already been addressed.

II. AB 904 Statutory Provisions Require Interpretation and Guidance.

Section 4597 (a)(5) - Legislative intent

The statute provides that to “ensure long-term benefits,” such as “added carbon sequestration,” “sustainable production of timber and other forest products,” and the “maintenance of ecosystem processes and services,” the working forest management landowner “shall comply with rigorous timber inventory standards that are subject to periodic review and certification.”

Comment [WU78]: Comment L10-1 Not cross referenced.

Regulation is needed to identify and/or provide these “rigorous standards.” While some of the content of the statute (i.e., § 4597.2(c)) may be viewed as providing standards, even if fully adopted as regulation, they do not provide sufficient guidance and interpretation.

Comment [WU79]: Comment L10-2 Not cross referenced.

It is not clear whether Draft Regulations section 1094.6 subsection (d) is intended to provide these “rigorous standards.” As an initial matter, the Draft Regulations are unclear and/or wrongly formatted, as there is a subsection (d) on page 5 and another on page 6. The subsection (c) on page 6 appears to be the intended version. This version suffers from ambiguity, in that while it requires a “description of the plan area within which timber operations are to be conducted,” it then lists numerous items that go beyond a description of the plan area, requiring information as to what activities, operations, and measures are proposed, rather than the required description of the plan area. It would make better sense to require first a description of the plan

area, and then separately provide the requirements to identify the proposed activities, operations, methods, etc.

Comment [WU80]: Comment L10-3 Not cross referenced.

Separate from these concerns, however, is the failure to adequately bring forward the intent of Public Resources Code Section 4597. The “rigorous timber inventory standards” need to be defined and identified as such, and provisions must be included to ensure their “periodic review and certification.” PRC § 4597(a)(5). The Legislature provided some guidance as to what are relevant standards. PRC § 4597.2(c). These too require interpretation and effective regulation. We believe the Draft Regulations need to establish rigorous and enforceable standards.

Comment [WU81]: Comment L10-4 Not cross referenced.

In providing this guidance, it is important that the maintenance of ecosystem processes and services includes provisions that adequately describe those processes and services and their maintenance in the context of the 14 CCR 916(b), as well as the Porter-Cologne definition of Water Quality Control: “. . . protection and correction of water pollution and nuisance.” A comprehensive description of the plan area is key. Mandatory compliance with 14 CCR 916.4 is necessary.

Comment [WU82]: Comment L10-5 Not cross referenced.

Section 4597.1 - Definitions

AB 904 did not define what it meant by “long-term benefits” such as “sustained production of timber and other forest products,” “added carbon sequestration,” “ecosystem processes,” and “ecosystem services.” The Board needs to give definition to and provide parameters for these terms if the objectives are to be satisfied, as they are at the heart of the WFMP.

Comment [WU83]: Comment L10-6. Not cross referenced

In addition, the definition of “sustained yield” provided in the Draft Regulations section 1094.3 should be amended to address the use of the word “commercial.” It is unclear what that term means; it is clear that the WFMP is limited to non-industrial timberlands. At a minimum, the definition should refer to “non-industrial commercial timberland.” We note that the definition of “sustained yield” is not a substitute for a definition of “sustained production of timber and other forest products.”

Comment [WU84]: Comment L10-7 Not cross referenced

Section 4597.2 - WFMP Contents

As a general comment, the Draft Regulations section 1094.6, identifying the WFMP content, in large part either use the same provisions as in the NTMP content regulations, or simply restate the language in Public Resources Code Section 4597.2 in defining the WFMP content. As the NTMP is a different kind of plan, which does not require all of the rigorous standards as in the WFMP, incorporating some of the NTMP provisions may be confusing and inaccurate. We note those below, as appropriate, when discussing specific sections.

And while there is nothing inherently incorrect with merely restating the legislation, the Board as the regulatory body is duty bound to provide adequate interpretation and clarity in order to ensure that the Legislative objectives are satisfied. This is why the Legislature gave the Board

the right to adopt any regulations “needed to implement” AB 904. There are certain areas in particular where this interpretation is needed, as discussed herein.

Overall, the format and accessibility of a WFMP is key. It should include a table of contents, and be readily accessible through internet

Comment [WU85]: Comment L10-8

Long-term sustained yield estimate and/or plan.

The statute requires information used to “determine long-term sustained yield” (subsection (c), (c)(3)), and refers to (1) “long-term sustained yield estimates” (subsection (c)(3)), (2) “long-term sustained yield projections” (subsection (i)(2)(A)), and (3) a “long-term sustained yield plan” (subsection (i)(1)(A)). While the statute does not then expressly require a “long-term sustained yield estimate” or “long-term sustained yield plan,” it surely is implied that a proposed “long-term sustained yield” will be provided, and that the WFMP will include a “long-term sustained yield plan.” The Draft Regulations do not provide this, and perpetuate the confusion by simply repeating the language of the statute. *Compare* PRC § 4597.2(c), (f), (i)(A) with Draft Regulations § 1094.6(d)(6), (9), (13). We do not find in the Draft Regulations, for example, an express requirement in section 1094.6 to even identify the “long term sustained yield.” This must be required, and based on the language in AB 904 Section 4597.2 a WFMP must include a “long term sustained yield plan.” The Board needs to adopt regulations to implement this requirement. Absent this, there is no real way to verify compliance over time.

Comment [WU86]: Comment L10-9 Not cross referenced.

Impacts to species and species habitat.

The statute requires the WFMP’s “long-term sustained yield projections” to include an “assessment” which “addresses” listed and other species that could be adversely impacted by potential changes to habitat (subsection (i)(2)(C)(i)), species habitat needs (subsection (i)(2)(C)(ii)), and constraints to timber management etc. (subsection (i)(2)(C)(iii)). Regulations are needed to interpret what is meant by an “assessment” and “address[ing]” these resources and potential impacts. For example, how is the WFMP to “address” these resources; what standards are to be applied; what criteria? Unfortunately, the Draft Regulations provide no insight or interpretation, as they merely adopt the statute’s language. *Compare* PRC § 4597.2(i)(2)(A) with Draft Regulations § 1094.6(d)(15). Regulations are needed to make clear what is required and what standards will apply to the assessment.

Comment [WU87]: Comment L10-10 Not cross referenced.

Similarly, subsection (i)(2)(C)(iii) refers to the “cumulative impacts assessment,” yet it is not specifically required by the statute and the Draft Regulations simply adopt the statute’s language. A cumulative impacts assessment should be and needs to be expressly required – with its measurable required contents. Mere reference to the term “plan” at the outset of the Draft Regulations is insufficient to impose this requirement. e cumulative impacts assessment is required because the language in Draft Regulations section 1094.6(d)(12) requires disclosure of state or federally listed threatened, candidate, endangered, or rare plant or animal species located within the “biological assessment area.” Presumably, that is intended to refer to a biological assessment area within a cumulative impacts analysis, but absent an express requirement for such an analysis, that term is unclear.

Comment [WU88]: Comment L10-11 Not cross referenced.

- Review Process for WFMP.

There are provisions within this statute which need regulatory interpretation.

Initial Inspection.

Subsection (b)(2), while somewhat in-artfully written, does require an initial inspection. The Draft Regulations simply adopt its language, § 1094.18(d)(2), without providing any guidance as to the scheduling of the initial inspection in a manner that involves all public agencies who have expressed a desire to participate in the inspection. This is needed to ensure that adequate review team agency participation and review occurs.

Comment [WU89]: Comment L10-12 Not cross referenced.

Appeal of denial.

Subsection (c) refers to the right to a “hearing” before the Board of Forestry, should a WFMP be denied.

Subsection (e)(1) refers to the ability of the working forest landowner to request, and the Board to conduct, a public hearing when the WFMP has been denied. Subsection (e)(4) then refers to an “appeal to the board.”

The Draft Regulations use this same language. §§ 1094.18(e)(1)-(h). These provisions are confusing at best. Does the landowner have a right of appeal, or merely a right to request a hearing? This is clearly an area where the Legislature needs the Board’s assistance to interpret the statute and make it clear, to clarify and make consistent that the landowner’s right to a hearing is a right of “appeal” which includes the public hearing.

Comment [WU90]: Comment L10-13 Not cross referenced.

Subsection (c) also provides that if the director denies the WFMP, s/he shall “state the reasons” for the denial. Subsection (e)(3) provides that if the Board overturns the director’s denial, it shall prepare “findings and its rationale” for overturning the decision. Again, the Draft Regulations simply adopt this language, failing to provide consistency and transparency for these decisions, by requiring that the director adopt “findings and rationale.” Draft Regulations § 1094.18(e), (g). In addition, EPIC believes it is necessary that both the director’s findings and the Board’s findings are issued publicly and made available in the same manner that all the other notices are posted.

Comment [WU91]: Comment L10-14 Not cross referenced.

Subsection (e)(4) provides that if the WFMP denial is upheld, then the director shall notify the landowner as to what changes are needed. The Draft Regulations provide nothing further. § 1094.18(h). Regulation is needed to require findings by the Board of Forestry to identify any reasons it may have, in addition to or different from those provided by the director’s statement of reasons (findings and rationale) that may become clear as a result of the appeal and public hearing process.

Comment [WU92]: Comment L10-15 Not cross referenced.

Regulation is also needed to clarify the process for a post-appeal review including provisions for a post-appeal inspection should it become necessary and for inter-agency review.

Comment [WU93]: Comment L10-16

- Substantial deviations

This section specifically requires the Board to define actions that would be considered to “substantially deviate[]” from the approved WFMP. Draft Regulations section 1094.15(b) provides the same definition of “substantial deviation” as in 14 CCR § 895.1. EPIC believes that more thought needs to be given to this section, to include criteria to identify substantial changes to the core provisions of AB 904 such as the rigorous timber inventory standards and LTSY, as well as the need for increased carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, and the maintenance of ecosystem processes and services.

Comment [WU94]: Comment L10-17
Not cross referenced.

- Non substantial deviations

This section specifically requires the Board to “specify, by regulation, those nonsubstantial deviations that may be taken.” The Draft Regulation section 1094.15(a) appears to be nothing more than what already exists in the NTMP regulation 1090.14(a). This is insufficient, as the WFMP is intended to be much more rigorous than the NTMP, particularly given its very large acreage of up to 15,000 acres. A clear standard must be used to define what is insignificant, so as to not seriously affect the key objectives of a WFMP. Section 1094.15(a) is unclear as well, failing to define or provide standards for what may be “minor in scope” and what may be presumed to be “reasonable.” Better regulation is needed to limit the potential for abuse of so-called “minor” deviations.

Comment [WU95]: Comment L10-18

and 4597.16 - Cancellation/Termination of WFMP

This section authorizes the landowner to cancel the WFMP, but provides no process by which that is to occur, other than through a written notice. Draft Regulations section 1094.28 adopts this language, without providing interpretation or guidance as to what kind of notice is provided, whether it must be circulated by the Department for review, whether other agencies and/or the public are entitled to receive this notice for the purpose of ensuring compliance with “rigorous timber inventory standards,” adopted commitments for sustainability, ecosystem maintenance, added carbon sequestration, wildlife protection, etc. Since the overall legislative intent is to ensure long-term benefits and verification of WFMP provisions, a regulatory process must be adopted to provide this in the event a landowner wants to cancel the WFMP. It is insufficient to simply allow for satisfactory completion of any given notice of operations.

Comment [WU96]: Comment L10-19 Not cross referenced.

Subsection (a) of section 1094.28 adopts the language of AB 904 Section 4597.16. Just as regulations are needed to define a process for landowner cancellation, so too regulations are needed to define what standards and process CalFire may use to cancel a WFMP. This process must include criteria to evaluate the WFMP in conjunction with the rigorous inventory standards and other objectives which the WFMP is intended to meet. Regulation is needed to provide standards to evaluate for satisfying these objectives, and to also ensure that if a WFMP is cancelled, whatever mitigation and protection measures required by the WFMP are fully satisfied, so that a landowner may not simply walk away from commitments which were incorporated to ensure the long-term benefits identified by the legislature.

Comment [WU97]: Comment L10-20 Not cross referenced.

- WFMP Notice

This section outlines the contents for the notice to operate under an approved WFMP. Once again, the Draft Regulations largely simply adopt the statutory language, without providing needed guidance and interpretation. *Compare* PRC § 4597.11(a) - (l) with Draft Regulation § 1094.8(a) - (m). Many of the statutory provisions need interpreting regulations.

Subsection (e) provides for a “statement” that no archaeological sites have been discovered in the harvest area since the approval of the WFMP. However, the WFMP contents outlined in Draft Regulation section 1094.6 make no reference to “archaeological sites,” referring only to “cultural or historical resources.” The current regulations do not define any of these three terms. Regulations are needed to clarify that the results of a search for “archaeological sites” must be documented in the WFMP.

Comment [WU98]: Comment L10-21

Subsection (f) also provides for a “statement” that protected and listed species “have not been discovered,” and specifies requirements for disclosure of documented occurrences of these species and development of take avoidance and mitigation measures if this information is not provided in the approved WFMP. It goes on to specify a requirement to report “documented occurrences of the species” as obtained from publically available sources, but does not require an actual search for these protected species within the WFMP area or the area proposed for operations.

Comment [WU99]: Comment L10-22 Not cross referenced.

These two subsections do not expressly require a plan area “search” or “survey,” yet it is obvious that to make the required “statements” some search must have been done. Regulation is needed to clarify that an actual on-the-ground search for archaeological sites and these protected plant and animal species must be conducted and documented in the Notice. This search should be done within the proposed area of operations as well as through the review of public and readily available sources of information, including management area review. Otherwise, the landowner may make the statement that the sites and/or species have not been discovered, without any search.

Comment [WU100]: Comment L10-23 Not cross referenced.

Similarly, subsection (g) provides for a statement that “no physical environmental changes in the harvest area [] are so significant as to require any amendment” of the WFMP. Regulation is needed to clarify that an assessment and review of the land covered by the WFMP and proposed area of operation under the notice has been conducted to determine whether there are significant physical environmental changes which require a WFMP amendment.

Comment [WU101]: Comment L10-24 Not cross reference.

Subsection (j) requires statement of “special provisions to protect unique areas within the area of timber operations,” but as with previously noted subsections, fails to require the elemental step to actually determine if any “unique areas” are within the area of timber operations. A requirement to determine if unique areas exist must be included.

Comment [WU102]: Comment L10-25 Not cross referenced.

Subsection (m) requires an update on erosion control mitigation measures “if conditions have changed.” Regulation is needed to interpret and provide standards for what constitutes “changed” conditions.

Comment [WU103]: Comment L10-26 Not cross referenced.

Draft Regulation subsection 1094.8(n) appears to be simply repeating what is in the statute, requiring any other information the Board may require by regulation. This appears unnecessary.

Comment [WU104]: Comment L10-27

There is a second subsection “m” to Draft Regulation section 1094.8, on page 17, which appears to include some of the same requirements as for an NTMP. It is unclear, in the absence of effective regulation to ensure that the objectives of AB 904 will be implemented, to know whether some of these provisions and what they may allow in terms of operations are appropriate. We note that in the version we have reviewed, for subsection (m)(3)(2) there is a comment which reads “Delete regeneration methods to alleviate need to map unevenaged silviculture.” We do not understand why such a deletion would be appropriate, as a prime objective of the WFMP is to achieve uneven aged timber stands, and thus mapping those stands would seem advantageous toward documenting compliance.

Comment [WU105]: Comment L10-28 Not cross referenced.

- Five Year Review

This section outlines a process for the five-year review of an approved WFMP.

Subsection (a) provides that the director shall convene a “meeting with the interdisciplinary review team” to “review” the administrative record and other information to “verify” that operations have been conducted in accordance with the WFMP. A field inspection “may” be conducted if a review team member requests one. As with other provisions, this language contemplates, yet does not expressly state, that an actual review must be done to “determine” if the Director can “verify” compliance. Regulation is needed to clarify this.

Comment [WU106]: Comment L10-29 Not cross referenced.

Subsection (b) provides that the Board shall adopt regulations for the development of a “plan summary” before each five-year review, for the purpose of allowing the review team to analyze information, including the number of notices of timber operations, the acreage operated under each notice, the violations received, and the volume harvested in relation to the projections of harvest in the plan.

The Draft Regulations section 1094.26(b) adopt these provisions. Subsection (b)(1)-(4) provides additional information, but it poorly worded so that it is unclear under what circumstances this information is required. It is also unclear whether this information constitutes the “plan summary” required by AB 904 Section 4597.12. If for example subsection (b)(1) is information to be provided in all instances, it requires an RPF for the WFMP owner to certify compliance. How then is that to occur? There are no provisions outlining the timing and manner in which that is to occur. Subsection (b)(3) is similarly unclear and objectionable. How are violations “received?” Either they are a part of the record or not. What standards are to apply to determine whether “potentially significant impact to public trust resources may occur from continuance of the WFMP?” And what is the process by which Cal Fire may be presented with “a fair argument that a project may have a significant effect on the environment?”

Comment [WU107]: Comment L10-30 Not cross referenced.

AB 904 section 4597.12 subsection (c) provides for public notice of the five-year review and a copy of the plan summary, with the ability to provide additional information to the review team for the five-year review. Draft Regulations section 1094.26(c) adopts this language,

without providing the necessary guidance as to how the public review can occur. The public is entitled to not only notice, but a defined period of time in which to review the plan summary and five-year review, particularly if the public wants to provide “a fair argument” as to significant effects on the environment and to public trust resources.

Comment [WU108]: Comment L10-31 Not cross referenced.

The Board needs to develop clear provisions for the five-year review to adequately implement the statute, to provide (1) a defined process and content for the “plan summary”, (2) a defined process for the five year review, which includes notice, scheduling, and agency and public access, (3) the standards which will be used to evaluate compliance with the WFMP as well as the legislative objectives such as uneven-aged management, added carbon sequestration, sustained production of timber and other forest products, aesthetics, maintenance of ecological systems and processes, etc., and (4) findings that are necessary to document the required “verification” required in Section 4597.

Comment [WU109]: Comment L10-32 Not cross referenced.

Section 4597.15 - Immediate Operation

This section provides that if the RPF certifies that the written notice conforms to and meets the requirements of the WFMP, then operations may immediately commence. While Section 4597.14 provides for disciplinary action against an RPF who makes any material misstatement, we find no provision in AB 904 which prevents and remedies impacts from immediate operations which are inconsistent with the approved WFMP. Regulation is needed to specify that should it be determined that a notice is materially misleading, the director has the right to and must immediately stop operations and proceed with Notice of Violation as provided in the FPR. The landowner as well as the RPF must be subject to discipline and held accountable.

Comment [WU110]: Comment L10-33 Not cross referenced.

Section 4597.17 - Change from NTMP to WFMP

This statute provides for a NTMP landowner to transition to a WFMP and requires the Board to adopt regulations to establish this amendment process. The Draft Regulations section 1094.29 appear to have not yet addressed this need. At this point, EPIC encourages the Board to draft regulation which clearly identifies how such a transition may occur, in a manner that ensures that the underlying NTMP provisions have been fully satisfied, and the rigorous standards imposed by the WFMP shall be incorporated.

Comment [WU111]: Comment L10-34

Section 4597.18 - Safe Harbor Agreements

This provision allows a landowner submitting a WFMP to simultaneously seek a safe harbor agreement from the Department of Fish and Wildlife pursuant to the Fish and Game Code. The Draft Regulations adopt the statute’s language. The Draft Regulations simply adopts the statutory language. In doing so, they fail to address how the review process for the WFMP shall proceed in conjunction with, or independent from, the application for a safe harbor agreement. Clarity as to how these two application processes may proceed, and/or coincide, should be provided.

Comment [WU112]: Comment L10-35 Not cross referenced.

Section 4597.19 - State Restoration Projects

This section specifies that a state restoration grant application may not be summarily denied on the basis that the proposed restoration project is a condition of the harvesting plan. The Draft Regulations simply adopt the statute's language, failing to deal with some ambiguity. The term "harvesting plan" is not used in any other section of the Draft Regulations, so it is unclear what this references.

Comment [WU113]: Comment L10-36

Section 4597.20 - Adoption of Regulations

This section gives the Board full authority to adopt regulations it finds necessary to implement AB 904. Thus, the Board needs to exercise its full authority to provide legitimate interpretation and guidance through regulation to advance AB 904's legislative intent.

III. Comments on Specific Draft Regulations.

In addition to those Draft Regulations which are referenced above, the following are specific Draft Regulations which need refinement or change.

Unnumbered Introduction to Working Forest Management Plan

The introduction which provides for equivalency of the term THP, timber harvesting plan, or word plan to the WFMP does not ensure that key information requirements and particularly the obligation to provide a cumulative effects assessment will be satisfied. Refinement is needed to ensure that at a minimum, key information requirements that are necessary to evaluate the WFMP are included. This can occur here or in the WFMP Contents regulation, at § 1094.6.

Comment [WU114]: Comment L10-37 Not cross referenced.

Section 1094.2 - Definitions

In addition to what is identified above, EPIC suggests the following changes:

The statute defines "late succession forest stand" as "stands of dominant and predominant trees that meet the criteria of the California Wildlife Habitat Relationships System class 5D, 5M, or 6 with an open, moderate, or dense canopy closure classification, often with multiple canopy layers, and are at least 10 acres in size. Functional characteristics of late succession forest stands include large decadent trees, snags, and large down logs." AB 904, § 4597.2(g)(3). In addition, AB 904 provides that "[n]othing in this requirement shall be interpreted to preclude active management on any given acre of an approved plan if the management is conducted in a manner that maintains or enhances the overall acreage of late succession forest stands that existed in the plan area upon initial plan approval." AB 904, §4597.(g)(1). EPIC recommends that the Board take notice of the Legislature's recognition that late succession forest stands can be much smaller than the current 20-acre limitation, to as little as one acre. Given this recognition by the Legislature that acreage of at least 10 acres--- or as small as 1 acre -- qualify as late succession forest stands, EPIC recommends that the Board adopt a definition which permits late succession

forest stands one acre or larger. This is consistent with current Department policy. In addition, EPIC suggests that the Board apply the new definition of “late successional forest stands” across the board by amending the definition of “late successional forest” currently contained in 14 CCR 895.1 to reflect a change from the minimum 20 acres down to the one acre or more in order to ensure consistency of identification, and application of this definition across all ownerships and as a part of all timber harvest planning documents.

Comment [WU115]: Comment L10-38 Not cross referenced.

“Long-term sustained yield” for the WFMP should incorporate the objective and standard of “uneven-aged management” such that the planning horizon for an “un-evenaged forest encompassed by the WFMP has reached a balance between growth and yield.”

Comment [WU116]: Comment L10-39 Not cross referenced

Comment [WU117]: Comment L10-40 Not cross referenced..

Section 1094.3 - WFMP Submittal and Notice of Preparation

The intent language provided in this section needs to be expanded to reference that the WFMP is for non-industrial landowners, and it should include the objectives set forth in Public Resources Code Section 4597(a)(5).

Comment [WU118]: Comment L10-41 Not cross referenced.

Section 1094.6 - Contents of the WFMP

In addition to comments concerning subsections of 1094.6 addressed above, EPIC suggests that the preliminary statement, which is patterned after the NTMP regulation at 14 CCR 1090.5, is too limiting. The WFMP should serve not only the functions as outlined, but the express function of developing an uneven-aged forest which ensures long-term benefits such as added carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, and the maintenance of ecosystem processes and services.

Comment [WU119]: Comment L10-42 Not cross referenced.

Section 1094.6 (d)(7) - Methods used to avoid significant sediment discharge to watercourses from timber operations

This section needs better definition and precision, particularly as to the phrase in the last sentence which permits “compliance with similar requirements of other applicable provisions of law.” This is very vague and ambiguous, and needs specificity.

Comment [WU120]: Comment L10-43 Not cross referenced.

Section 1094.6 (d)(10) - Description of late succession forest stands

This section uses an undefined phrase – “a constraint of no net loss.” This needs definition so that it can be an enforceable standard.

Comment [WU121]: Comment L10-44 Not crossed referenced.

Section 1094.6 (d)(13)(A) - Description for each management unit

This subsection illustrates well the issue concerning the need for a “LTSY plan,” as it expressly refers to the “LTSY plan,” yet as discussed above, the regulations do not require a “LTSY plan.” The regulations should require an LTSY plan.

Comment [WU122]: Comment L10-45 Not cross referenced.

Section 1094.6 (d)(15) - LTSY projections for reduction in trees greater than 12 inches in diameter or reduced level of inventory of a major stand type

This subsection appears to permit a reduction in LTSY, provided certain resources (protected species, species habitat, and constraints no timber management) are “addressed.” EPIC objects to this provision, as written, as it appears to permit reduction in overall canopy and age classes. The subsections (A), (B) and (c) are also all unclear to the extent they require the WFMP to “address” the identified resources and issue, as it the term “address” is too vague and without criteria to gauge whether the information to be presented may be adequate. Stricter standards are required to ensure that any such reduction in LTSY must be limited, so as to prevent disregard for the core objectives of a WFMP.

Comment [WU123]: Comment L10-46 Not cross referenced.

Section 1094.6 (d)(17) - Certification of personal inspection of plan area

One of the ongoing concerns in private land forestry is the lack of disclosure and inspection of the entirety of a plan area. This subsection should be amended to require that the certification attests to personal inspection of “all of the plan area.”

Comment [WU124]: Comment L10-47 Not cross referenced.

Section 1094.6 (d)(18) - Any other information required by regulation

This subsection appears unnecessary.

Comment [WU125]: Comment L10-48 Not cross referenced.

Section 1094.6 (d)(25) - Description of cumulative impacts analysis

As referenced above, the Draft Regulations need to include an express required that a cumulative impacts analysis is required.

Comment [WU126]: Comment L10-49 Not cross referenced.

Section 1094.10 (d) - Plan submitted responsibility

It is unclear to EPIC why a provision would be included to exempt corporations from the duty to file a notification of change in responsibilities or substitution of an RPF “because the RPF of record on each document is the responsible person.” This makes no sense, as the RPF of record is always a responsible person, subject to significant license requirements. A corporation is no different than a person under the code, Public Resources Code Section 4525, and should be treated no differently when it comes to notifying the Department of changes of the RPF for WFMP implementation.

Comment [WU127]: Comment L10-50

Section 1094.11 (e) - Registered Professional Forester Responsibility

This subsection refers to “attainment of the resource conservation standards of the WFMP.” As discussed above, the Draft Regulations do not identify requirements for or specifics of “resource conservation standards” for any given WFMP. Thus, this terminology is meaningless. Draft Regulation section 1094.6 must include express resource conservation standards.

Comment [WU128]: Comment L10-51 Not cross referenced.

Section 1094.17 - Agency and Public Review for the WFMP

Section 1094.18 - Director's Determination

We address these two sections together because we believe they need to be reorganized to better outline first the review process for the WFMP, and second the decision-making process for the WFMP.

To illustrate this need, we note that while section 1094.17 provides for posting of the WFMP, and circulation to other public agencies, it says nothing about a review process for the general public. That is found in section 1094.18(a)-(c). These provisions should be in the same regulation.

Comment [WU129]: Comment L10-52 Not cross referenced.

With respect to introduction to section 1094.17, the placement of the proposed plan is provided as either in a location OR on an internet Web site. The proposed plan should be available BOTH in a location and on an internet Web site.

Comment [WU130]: Comment L10-53 Not cross referenced.

Section 1094.17(a) permits the Department to "bill such persons," but it is entirely unclear what "persons" are referenced here. This appears to be a consequence of cutting and pasting from the NTMP regulations, and the deletion in the Draft Regulations of the provision that the Department shall transmit a copy of any specific plan to any person who has made a written request for it. EPIC believes that this subsection needs to be reinserted.

Comment [WU131]: Comment L10-54 Not cross referenced.

The provisions of section 1094.18(a)-(c) should be placed in section 1094.17, as provisions identifying "agency and public review for the WFMP." Additional language is needed to identify the manner and format in which the public may provide comments.

Comment [WU132]: Comment L10-55 Not cross referenced.

The Draft Regulations adopt AB 904 Section 4587.6(a) process for public review. Section 1094.18 (d) identifies what is needed for approval. While technically this is part of the Director's determination, it is clearly part of the review process. It is unfortunate that the Draft Regulations simply adopt the structure of AB 904 Section 4587.6, rather than organize the regulations to deal first with the review process, and second with the decision process. Additionally, Section 4587.6(a) does not provide a provision to determine "completion of final interagency review of the plan." This provision is adopted in Draft Regulations subsection 1094.18(d)(4). A provision is needed to define what constitutes "completion of final interagency review of the plan." The Board should address this through regulation.

Comment [WU133]: Comment L10-56 Not cross referenced.

Draft Regulations section 1094.18(e) - (h) effectively provides a right of appeal to a landowner in the event the Director finds the WFMP is not in conformance with the rules. As discussed above, the Draft Regulations need to clarify the process as an "appeal" process, and provide appropriate procedures to document decision-making.

Comment [WU134]: Comment L10-57 Not cross referenced.

Section 1094.20 - Nonconformance of the WFMP

This section appears to be a copy of the NTMP regulation 14 CCR 1090.20, and by reference to 14 CCR § 1054, appears to introduce conflicting provisions from those set forth in

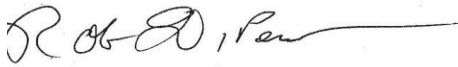
Draft Regulations section 1094.18. Careful review is needed to determine whether this section should be included.

Comment [WU135]: Comment L10-58 Not cross referenced.

IV. Conclusion

EPIC appreciates the opportunity to provide comments to the Committee at this early stage of regulatory development for the WFMP. Please do not hesitate to contact me at the number provided below if there are questions.

Sincerely,



Rob DiPerna
California Forest and Wildlife Advocate

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March 2, 2015

Board of Forestry and Fire Protection
Attn: Thembi Borrás
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

*RE: Calforests' support of "Working Forest Management Plan" adoption by
Board of Forestry*

Dear Chair Gilless and Board Members:

The California Forestry Association (Calforests) supports the adoption of the "Working Forest Management Plan" (WFMP) by the Board of Forestry. The Working Forest Management Plan would allow for the perpetual timber management on non-industrial timberland ownerships of up to 15,000 acres in size. Calforests believes that providing these ownerships with an option, such as the WFMP, to manage their timber will help to realize long-term goals for all private timberlands in California such as increased forest health, decreased potential for catastrophic wildfire, and the promotion of long-term forest management. This long-term management will provide many of the same benefits currently associated with the Non-industrial Timber Management Plan. These benefits, outlined in the WFMP Initial Statement of Reasons, include "the retention of open space, protection of watersheds, water quality and forest soils, and the maintenance of diverse habitats for fish and wildlife...."

However, Calforests has some concerns with the proposed WFMP draft. Additional provisions added to the WFMP draft during Management Committee review and revisions in 2014 have added various new requirements to the draft WFMP rule. These new provisions are above and beyond what was passed in the underlying statute, AB 904. When AB 904 was passed and signed into law on October 8, 2013, there was detailed language included in the bill for the protection of all forest resources. These protections were far-reaching and included measures for the protection of wildlife, water resources, soil, cultural resources, and virtually every other resource. Calforests believes that the language contained in AB 904 should have been used with virtually no major modification as the text for final WFMP draft rule. The addition of a number of new requirements and provisions may, in our opinion, have compromised the cost-

effectiveness of the WFMP. This, in turn, may directly affect how many landowners will ultimately opt to use a WFMP on their ownerships.

Despite these issues, Calforests still supports the underlying intent of the WFMP, and we encourage the Board of Forestry to adopt the WFMP—without significant additional revisions—at their March 4, 2015 meeting. We encourage monitoring its implementation to evaluate its efficiency, effectiveness and utilization.

Thank you for the opportunity to comment on this matter.

Sincerely,

A handwritten signature in blue ink, reading "David A. Bischel". The signature is fluid and cursive, with the first name "David" being the most prominent.

David Bischel, President

VIA EMAIL: publiccomments@BOF.ca.gov



DEPARTMENT OF FORESTRY AND FIRE PROTECTION

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March 2, 2015

Dr. Keith Gillespie, Chairman
State Board of Forestry and Fire Protection
P. O. Box 944246
Sacramento, CA 94244-2460

Re: Working Forest Management Plan

Dear Chairman Gillespie:

The California Department of Forestry and Fire Protection (CAL FIRE) has reviewed the proposed regulation language included in the 45-day notice for the Working Forest Management Plan (WFMP) scheduled for hearing March 4, 2015.

The Working Forest Management Plan is a comprehensive rule package that requires a considerable amount of review to assure that the implementation meets the objectives of Assembly Bill (AB) 904 for resource protection, uneven-aged management and sustained yield. The bill also requires adoption of regulations allowing CAL FIRE to determine if a submitted WFMP is accurate, complete, in proper order and includes clear and enforceable provisions to meet the intent of the Forest Practices Act.

Please consider the comments included in *Attachment A* during your deliberations on the proposed regulations intended to implement the statutory requirements of Public Resources Code Article 7.7 - Working Forest Management Plan.

Thank you for providing the Department an opportunity to comment on this important rule package. A representative from CAL FIRE will be at the hearing should any questions arise related to this proposed change to the regulations.

Sincerely,

D-V

DUANE SHINTAKU
Deputy Director
Resource Management

Attachment

"The Department of Forestry and Fire Protection serves and safeguards the people and protects the property and resources of California."

Attachment A
CAL FIRE Comments
on the
Working Forest Management Plan
March 2, 2015

CAL FIRE provides the following comments for consideration by the Board of Forestry and Fire Protection during their deliberations on the proposed regulations intended to implement the statutory requirements of public Resources Code Article 7.7 - Working Forest Management Plan.

1. CAL FIRE recommends adding the abbreviation "WFMP Working Forest Management Plan" to 14 CCR § 895.
2. Page 3, Line 14 (ref. 14 CCR § 895.1(d)): CAL FIRE recommends changing the Public Resources Code (PRC) reference from PRC § 4597 to PRC § 4597.1 to explicitly reference the definition of a Working Forest Management Plan rather than referencing the section that primarily focuses on the legislative intent for Article 7.7 as a whole.
3. Page 7, Line 1 (ref. 14 CCR § 1090.26): CAL FIRE does not support adoption of 14 CCR § 1090.26(d). Adoption of this subsection, in combination with 14 CCR § 1090.26(b), effectively results in transferring to CAL FIRE the responsibility for notifying the new landowners of their responsibilities with regard to the NTMP. CAL FIRE recommends that failure of the transferring timberland owner to notify the acquiring timberland owner of the existence of the NTMP and their responsibilities, including stocking requirements, should be considered a misdemeanor pursuant to PRC § 4601. Such disclosures should remain the responsibility of the seller and the changes proposed by the Board under 14 CCR § 1090.26 do not appear to be consistent with the intent of the legislation with regard to the landowners responsibilities to provide notice. CAL FIRE recommends the Board not adopt the new language proposed under subsection (b) and recommends the following change to subsection (d):

"(d) A violation of this subsection by a timberland owner does not constitute § a misdemeanor 6F" 6 pursuant to PRC § 4601."

4. Page 7, Lines 11 through 14 (ref 14 CCR § 1090.28): CAL FIRE recommends that the Board not adopt this new section of regulations. This is primarily a restatement of the statute under PRC § 4597.19 and it is not necessary to transfer this language to regulation. This language is irrelevant to the review, approval and enforcement of the provisions of a NTMP and it is not necessary to include it in regulation.
5. Page 8, Lines 13 through 18 (ref. 14 CCR § 1094.1): This section of the regulations includes language that is not clear and could result in the submission of incorrect information to inappropriate locations. As indicated in *Comment 2* (above), CAL FIRE recommends changing the Public Resources Code (PRC) reference from PRC § 4597 to PRC § 4597.1 to explicitly reference the definitions of Working Forest Management Plan and Working Forest Harvest Notice rather than referencing the section that primarily focuses on the legislative intent for Article 7.7 as a whole. Additionally, the language on line 17 stating in part, "...having jurisdiction over timber operations ..." could be confusing and result in plans and/or notices being submitted to the wrong CAL FIRE office.

Comment [WU136]: Not cross referenced.
Comment retracted by CAL FIRE

Comment [WU137]: Not cross referenced

Furthermore, the language on line 18 states that the WFMP or the Working Forest Harvest Notice shall contain the information specified in 14 CCR §§ 1094.6 and 1094.8; however, 14 CCR § 1094.6 is only pertinent to the WFMP and 14 CCR § 1094.8 only refers to the contents of the Working Forest Harvest Notice. CAL FIRE recommends the following changes to the proposed regulations:

"The Working Forest Management Plan (WFMP) and eF-Working Forest Harvest Notice for proposed timber operations, as defined under PRC § 4597.1, pursuant to 4597 et seq. shall be submitted in writing to the Director at the appropriate CAL FIRE Review Team Office specified under 14 CCR § 1032, having jurisdiction for the timber operations, and shall contain at a minimum the information specified in 14 CCR §§ 1094.6 and 1094.8 as appropriate."

6. Page 9, Lines 3 and 4 (ref. 14 CCR § 1094.2(a)): CAL FIRE believes the definition of "Designated Agent" could be misconstrued to mean the Designated Agent has broad authority to act on behalf of the plan submitter(s) wherever there is a reference to plan submitter(s) in the rules. CAL FIRE does not believe the Board has legislative authority to delegate the legislated responsibilities of the plan submitter(s) to another person. While CAL FIRE supports the use of a single point of contact (e.g., a Designated Agent) for many matters associated with the WFMP, the regulations must be clear that the responsibilities of this 'agent' are restricted to only those specified in the regulations. Furthermore, it must be clear in the plan that all of the Working Forest landowners have signed and approved the authorization of the Designated Agent. CAL FIRE recommends the Board consider the following changes to this definition:

"Designated Agent" means a person granted sole authority through written certification of the Working Forest Landowner(s) designated in a submitted or approved WFMP, to conduct those activities specifically assigned to a designated agent in the Rules and Regulations on behalf of the plan submitter(s).

7. Page 11, Line 11 (ref. 14 CCR § 1094.3 and 14 CCR § 1094.29(e)): CAL FIRE believes the Board should address more specifically the information required to be included in the WFMP and the Five-Year Review that should be considered proprietary information. The new regulations state under 14 CCR § 1094.3 that the "...WFMP shall be prepared by a RPF, shall be public record..." [emphasis added], but 14 CCR § 1094.29 (e) on page 47, line 17 states in regard to the Five-Year Review, "This section does not authorize the public disclosure of proprietary information ...". It is clear the Board and the Legislature intended some of the information, but not all the information, to be available to the public for review. However, the Board's rules do not indicate which parts of the WFMP should be considered proprietary and only reference proprietary information in regard to the Five-Year review. CAL FIRE recommends the Board make clear the information required to be submitted for both the WFMP and the Five-Year Review that CAL FIRE should treat as proprietary information.
8. Page 11, Lines 24 and 25 (ref. 14 CCR § 1094.3(d)(1)): A Designated Agent can neither prepare nor submit a WFMP or Notice of Preparation. Additionally, a Designated Agent is not necessarily required to be identified until after a WFMP is approved (ref. 14 CCR § 1094.10(C) and (d)). Furthermore, CAL FIRE believes plan submitters do not have the authority to delegate their legislated responsibilities to the Designated Agent (reference Comment 6 above). Lastly, it is unclear why a Designated Agent would be listed on the Notice of Preparation without any additional contact information, since they are not

necessarily associated with ownership of the timberland. Therefore, CAL FIRE recommends the reference to a Designated Agent under subsection (1) be deleted.

9. Page 12, Line 16 (ref. 14 CCR § 1094.3(e)): The requirements to prepare a 'Notice of Preparation' apply equally to a WFMP and a substantial deviation to a WFMP. When proposing an enlargement of the WFMP plan area, it should be clear in the regulations that all property owners within 300 ft. of the WFMP area, including the area covered by the substantial deviation, be provided notice. CAL FIRE recommends the following change to this section of the regulations for clarification:

"(e) The person(s) submitting the plan shall furnish to the Department . . . a list of all persons . . . within 300 ft. of the entire plan boundary."

10. Page 14, Line 14 (ref. 14 CCR § 1094.6(a)): The proposed regulations require the contents of the WFMP to include the name of the Designated Agent; however, such a person is not necessarily required at the time of WFMP submission (ref. *Comments 6 and 8* above). CAL FIRE recommends the Board revise the proposed regulations to insert a new subsection (b) that would state:

"(b) Name, address and telephone number of the Designated Agent if known at the time of WFMP submission."

11. Page 14, Line 15 (ref. 14 CCR § 1094.6(b)): CAL FIRE recommends that subsection (b) be revised for clarity to state: "Name, address, and telephone number of the timber owner(s) (if different than the timberland owner(s))."

12. Page 14, Line 25 (ref. 14 CCR § 1094.6(d)): The regulations require the contents of the WFMP to include a description of the silvicultural method(s) to be applied during the initial harvest (ref. 14 CCR § 1094.6(h)(1)). To facilitate the review of a WFMP, CAL FIRE recommends the mapping requirements be revised so that the following new subsection (2) be inserted in the 'Contents' requirements:

"(2) Boundaries of proposed silviculture prescriptions to be applied during the initial entry."

13. Page 16, Line 20 (ref. 14 CCR § 1094(g)): The proposed rule language refers to growth and yield calculations used to determine LTSY by volume; however, no unit of measure is given. Since the California Board of Equalization uses the Scribner board foot system, CAL FIRE recommends referencing this as an appropriate form of measurement for conifer species. CAL FIRE recommends the Board consider referencing cubic feet for hardwood species.

14. Page 17, Line 2 (ref. 14 CCR § 1094.6(g)(3)): This section of the proposed regulations requires that inventory estimates of growth and yield be provided. CAL FIRE recommends that a stand or stock table indicating the tree diameter distribution including total heights be provided to support the inventory estimates. In addition, an inventory stand or strata summary table should be included indicating the: 1) the acreage; 2) number of measured inventory samples or plots; 3) corresponding site class; 4) average conifer and hardwood basal area density; 5) average conifer and hardwood volume per acre; 6) average conifer and hardwood trees per acre; 7) average first period conifer growth per acre; 8) quadratic mean diameter (QMD); and 9) corresponding WHR. This information would allow for greater confidence in the estimate provided.

Comment [WU138]: Not cross referenced.

15. Page 17, Line 3 (ref. 14 CCR § 1094.6(g)(3)): In order to evaluate growth and yield over time, CAL FIRE recommends that subsection (3) be revised to state "...determining LTSY and volumes available for harvest by Stand or Strata for each ownership of undivided interest and aggregated for the area covered by the WFMP to develop the LTSY estimate."

16. Page 17, Line 10 (ref. 14 CCR § 1094.6(h)): The proposed regulations require the inclusion of a description of the property and planned activities including acres and projected growth, existing stand types, Major Stand Types or Strata, etc. CAL FIRE suggests the description also include such specific information as species composition, age classes, present stocking level, present volume per acre, size class distribution, stand management history, and potential pest or protection problems. These requirements are similar to those for Nonindustrial Timber Management Plans (NTMPs) found under 14 CCR § 1090.5(g).

Comment [WU139]: Not cross referenced

17. Page 17, Line 12 (ref. 14 CCR § 1094.6(h)): This subsection refers to a description of silvicultural method(s) to be applied to Strata to achieve LTSY. In addition, a discussion should be included regarding additional potential silviculture methods that may be utilized during the life of the WFMP such as sanitation salvage, including the forest conditions when these methods would be utilized. This would allow greater confidence in the growth and yield projections and provide greater flexibility for future management should site conditions change over time.

Comment [WU140]: Not cross referenced

18. Page 21, Line 12 (ref. 14 CCR § 1094.6(cc)): This subsection should be moved down to line 13.

19. Page 23 (ref. 14 CCR § 1094.8): CAL FIRE recommends the Working Forest Harvest Notice Content includes a provision requiring the identification of the silvicultural prescriptions that will be implemented during the harvest conducted under the notice.

20. Page 23, Line 10 (ref. 14 CCR § 1094.8(b)): The proposed regulations require the contents of the Working Forest Harvest Notice to include the name of the Designated Agent. CAL FIRE recommends the Board revise the proposed regulations to insert a new subsection (b) that would state:

"(b) Name, address and telephone number of the Designated Agent."

21. Page 28, Line 11 (ref. 14 CCR § 1094.10): The reference to "working Forest Notice" is incorrect. This should be changed to "Working Forest Harvest Notice."

22. Pages 28 and 29, Lines 17 through 25 and 1 through 5 (ref. 14 CCR § 1094.10): The Board should consider allowing the plan submitter to delegate responsibility to the Designated Agent for subsections (i) through (k). CAL FIRE recommends the Board consider adoption of a new subsection (l) stating:

"(l) The plan submitter(s), or successor in interest, may delegate responsibility for 14 CCR § 1094.10 through (k) to the Designated Agent, with written notification to the Director."

23. Page 30, Lines 12 and 13 (ref. 14 CCR § 1094.11(g)): CAL FIRE recommends the RPF provide notice to the Designated Agent as well as those others listed under subsection (g). The following changes to the proposed regulations are recommended:

"(g) The RPF shall without delay notify, in writing, the LTO(s), the plan submitter(s), the designated agent, and the Department of a decision to withdraw professional services from the plan.

24. Page 41, Line 2 (ref. 14 CCR § 1094.23(c)(1)): The current rules applicable to substantial deviations under an SYP (ref. 14 CCR § 1091.13(a)) require an amendment for a change from the average harvesting projections in any ten-year period which exceeds ten percent. CAL FIRE recommends the Board insert a new subsection (c)(2) that would incorporate similar language for a WFMP:

"(2) Change in the average harvesting projections in any ten-year period which exceeds ten percent, including a deviation caused by changes of ownership and catastrophic events."

25. Page 42, Lines 22 through 24 (ref. 14 CCR § 1094.24(b)): CAL FIRE believes that a Designated Agent should be authorized to submit deviations normally presumed to be substantial deviations, but considered minor deviations by the plan submitter(s). CAL FIRE recommends the following change to the proposed regulations:

"Actions listed as substantial deviations in 14 CCR § 1094.23, but considered to be minor deviation§ by the submitter(s), may be undertaken only if the person who submitted the plan or the designated agent submits the proposed deviation in writing to the Director for review and approval."

Page 47, Lines 2 through 4 (ref. 14 CCR § 1094.29(c)): The proposed regulations do not provide the public access to the findings of the five-year review. The rules require the Department to notify the Working Forest Landowner(s) of the findings, but fail to provide similar notification to the public and other review team agencies. CAL FIRE recommends the following changes to the proposed regulations:

"The Department shall notify the Working Forest Landowner(s) of the findings of the five (5) year review and shall provide the public, in writing or on a publically available internet database, a copy of the findings."

Comment [WU141]: L15-25.1 Not cross referenced.

26. Page 48, Line 19 (ref. 14 CCR § 1094.30): CAL FIRE does not support adoption of 14 CCR § 1094.30(e). Adoption of this subsection, in combination with 14 CCR § 1094.30(b), effectively results in transferring to CAL FIRE the responsibility for notifying the new landowners of their responsibilities with regard to the WFMP. CAL FIRE recommends that failure of the transferring timberland owner to notify the acquiring timberland owner of the existence of the WFMP and their responsibilities, including stocking requirements, should be considered a misdemeanor pursuant to PRC § 4601. Such disclosures should remain the responsibility of the seller and the changes proposed by the Board under 14 CCR § 1094.30 do not appear to be consistent with the intent of the legislation with regard to the landowners responsibilities to provide notice. CAL FIRE recommends the Board not adopt the new language proposed under subsection (b) and recommends the following change to subsection (d):

"(d) A violation of this subsection by timberland owner does not constitute a misdemeanor if it is pursuant to PRC § 4601."

Comment [WU142]: Not cross referenced. Comment retracted by CAL FIRE.

27. Page 50, Line 2 (ref. 1094.32(a)(1)): CAL FIRE recommends changing the word "and" to "if as follows:

"(1) Operations may continue under an approved NTMP . . . , the landowner notifies the Director"

28. Page 50, Line 20 (ref. 1094.33): CAL FIRE recommends that the Board not adopt this new section of regulations. This is primarily a restatement of the statute under PRC § 4597.18 and it is not necessary to transfer this language to regulation. This language is irrelevant to the review, approval and enforcement of the provisions of a WFMP and it is not necessary to include it in regulation.

Comment [WU143]: Not cross referenced.

29. Page 51, Line 6 (ref. 1094.34): CAL FIRE recommends that the Board not adopt this new section of regulations. This is primarily a restatement of the statute under PRC § 4597.19 and it is not necessary to transfer this language to regulation. This language is irrelevant to the review, approval and enforcement of the provisions of a WFMP and it is not necessary to include it in regulation.

Comment [WU144]: Not cross referenced.



DEPARTMENT OF CONSERVATION
CALIFORNIA GEOLOGICAL SURVEY

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Board of Forestry and Fire Protection
Attn: Thembi Borrás
Regulations Coordinator
publiccomments@BOF.ca.gov
P.O. Box 944246
Sacramento, CA 94244-2460

March 2, 2015

Re: Proposed Rulemaking Regarding "Working Forest Management Plan"

Dear Chairman Gilles and Members of the Board:

The California Geological Survey (CGS) has reviewed the proposed revisions to the Forest Practice Rules contained in Title 14 California Code of Regulations, titled "*Working Forest Management Plan*". These proposed rule revisions are presented in the 45-day notice circulated by the Board of Forestry and Fire Protection (Board) on January 16, 2015.

It is understood that the *Working Forest Management Plan* (WFMP) is modeled after Non-industrial Timber Management Plans (NTMP) to allow nonindustrial landowners with no more than 15,000 acres to apply for a timber harvesting document that would allow for long-term approval. A WFMP would last in perpetuity, similar to a NTMP.

Below CGS offers one general and nineteen specific comments on the proposed rule package.

General Comment:

1. To be consistent with the "2013 Road Rules" rule package, and the road requirements for THPs, CGS recommends that a number of modifications be incorporated into sections 1094.6 and 1094.8 of the WFMP, as noted in the "Specific Comments" below. CGS has attempted to incorporate provisions of the 2013 Road Rules into the comments below; however, we recommend that a more detailed analysis of the 2013 Road Rules be conducted to ensure that the WFMP is consistent with the new roads rule package.

Specific Comments:

CGS's first three comments below relate to ground disturbance, winter operations, and the five year review; the subsequent comments relate to roads and consistency with the 2013 Road

Rules. CGS's recommended changes are shown in bold by the strikethrough and double underline text presented below.

§1094.6 Contents of WFMP.

1. CGS believes that it is important for each WFMP to include a general description of areas that may be sensitive to ground disturbance along with the discussion of the impacts and protections for the beneficial uses of water so that linkages can be made between proposed operations and potential impacts. This is consistent with the provisions of other regional scale documents such as SYPs (§ 1091.6)

1094.6 (t) A description of areas known to be sensitive to ground disturbance. and the potential impacts to, and protections for, the quality and beneficial uses of water.

2. The proposed rule package continues to set different standards for Winter Operating Plans within watersheds with listed anadromous salmonids (ASP watersheds) than the standards for those watersheds outside the zone of anadromy. As proposed in the current rule package, in areas outside ASP watersheds a Winter Operating Plan is not required if a limited series of measures are specified in the WFMP. Regardless of the presence of anadromy, CGS recommends that a Winter Operating Plan be required if winter operations are proposed. This requirement will provide clarity on the measures to be taken to limit potential impacts due to operations conducted during the winter period.

1094.6 (aa) Winter period operating plan where appropriate if winter operations are proposed.

§1094.29 Five (5) Year Review of WFMP

3. CGS believes that significant storms should be included in the list of "significant episodic events" to be analyzed as part of the five (5) year review.

1094.29 (c) For the purpose of 14 CCR 1094.29(b), each five (5) year review shall allow the review team to analyze information including the number of Working Forest Harvest Notices, the acreage operated under each Working Forest Harvest Notice, the violations received, the volume harvested in relation to projections of harvest in the WFMP... The review team shall also analyze any significant episodic events occurring during the previous five (5) years including disease and drought caused tree mortality, windthrow, significant storms, wildfire, and landslides. If the Department or a review team agency...

Road related comments:

§1094.6 Contents of WFMP.

4. 1094.6 (d) (3) Location of public roads within the plan area, and private roads appurtenant to the timber operations where such roads are under the ownership or control of the timberland owner(s) and are contiguous with the plan area, and classification of all proposed and existing logging roads as permanent, seasonal, ei:

temporary, or deactivated. Location and miles of proposed new, reconstructed, and abandoned roads. Location of roads that provide access to rock pits and water drafting sites, and the location of water drafting sites.

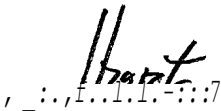
5. 1094.6 (d) (4) Location of proposed and existing roads and landings in watercourses, lakes, marshes, wet meadows, or other wet areas, the watercourse and lake protection zone, other than at road watercourse crossings, and Landings outside the watercourse and lake protection zone that are greater than % acre in size or whose construction involves substantial excavation.
6. 1094.6(d) (14) Location of all existing and proposed permanent watercourse crossing drainage structures, and temporary crossings on Class land II watercourses or roads, including those crossings to be abandoned or deactivated.
7. 1094.6 (d) C18I Location of logging road grades greater than 15 percent for over 200 continuous feet or logging road grades exceeding 20 percent.
8. 1094.6 (d) C19I Location of logging roads across unstable areas or connected headwall swales.
9. 1094.6 (d) C20I Location of excess material disposal sites on slopes greater than 40 percent or on active unstable areas.
10. 1094.6 (d) C21I Location of logging roads and landings across slopes greater than 50 percent for 100 lineal feet or more within 100 feet of the boundary of a WLPZ that drains toward the zoned watercourse or lake.
11. 1098.6 (d) (22) Location of logging roads and landings across slopes greater than 50 percent for 100 linear feet or more within 100 feet of the boundary of a WLPZ that drains toward the zoned watercourse or lake.

§1094.8 Working Forest Harvest Notice Content

12. 1094.8 (s) (4) Location of public roads within the Working Forest Harvest Notice area, and private roads appurtenant to the timber operations where such roads are under the ownership or control of the timberland owner(s), and are contiguous with the Working Forest Harvest Notice area. The current classification of all proposed and existing logging roads as permanent, seasonal, *temporary, or deactivated shall be included. Location and miles of proposed new, reconstructed, and abandoned roads. Location of roads that provide access to rock pits and water drafting sites, and the location of water drafting sites.
13. 1094.8 (s) (5) Location of proposed and existing roads and landings in watercourses, lakes, marshes, wet meadows, or other wet areas, the watercourse and lake protection zone, other than at road watercourse crossings, and Landings outside the watercourse and lake protection zone that are greater than % acre in size or whose construction involves substantial excavation.

14. 1094.8 (s) (7) Location of all existing and proposed watercourse crossings on logging and tractor roads, including those crossings to be abandoned or deactivated; if a permanent culvert is involved, its minimum diameter shall be provided.
15. 1094.8 (s) (13) Location of logging road grades greater than 15 percent for over 200 continuous feet or logging road grades exceeding 20 percent.
16. 1094.8 (s) (14) Location of logging roads across unstable areas or connected headwall swales.
17. 1094.8 (s) (15) Location of excess material disposal sites on slopes greater than 40 percent or on active unstable areas.
18. 1094.8 (s) (16) Location of logging roads and landings across slopes greater than 50 percent for 100 lineal feet or more within 100 feet of the boundary of a WLPZ that drains toward the zoned watercourse or lake.
19. 1098.8 (s) (17) Location of logging roads and landings across slopes greater than 50 percent for 100 linear feet or more within 100 feet of the boundary of a WLPZ that drains toward the zoned watercourse or lake.

CGS staff will be available at the Board meeting to answer any questions you may have.



William R. Short, CEG
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2 March 2015

comments on the WFMP to <publiccomments@bof.ca.gov>

J. Keith Gilles, Chairman
California Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244

Dear Dear Chairman and Board --

The 45-Day Notice Working Forest Management Plan rules package is inadequate as a Planning Document. It does not provide a professional, and high standard format, that adequately meets the needs of such an ambitious program, nor does it ensure compliance with the needs of specific forest practice rules, notably 14 CCR 916.4 (a) and (b). It has been claimed that implementation of 916.4 is part of the WFMP, but if that implementation is of the standard found in many if not most THPs, that implementation falls way short.

Each WFMP needs to have the basic elementary information presented in the same way, in the same order and format. Additional information can be included as the submitter sees fit, but a set of basic requirements must be standardized that are adequate for the protection and recovery of WFMP forests through generations. This is doable and essential and is missing.

Sincerely,

Richard Gienger



Forest Landowners
OF CALIFORNI A

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March 2, 2015

Board of Forestry and Fire Protection
Dr. Keith Gilles, Chair
P.O. Box 944246
Sacramento, CA 94244-2460

Re: Working Forest Management Plan (WFMP) Proposed Rule Language

Dear Dr. Gilles and Members of the Board:

The Forest Landowners of California (FLC) has reviewed the above-referenced rule package. We would like to express thanks to you, the management committee, and Board staff for the time and effort you have spent to get this rule package to its current state. We especially appreciate that the management committee and Board staff consulted legislative staff when questions of intent arose during the development of the legislative process.

FLC and the California Licensed Foresters Association (CLFA) had originally sponsored AB 2170 (Chesbro, 2012). The bill was withdrawn at the end of the 2012 legislative session to provide additional time to fully develop the concepts and legislative language that could draw diverse stakeholder support with time to consider and comment upon the broad framework of the proposed legislation as well as the language of the WFMP. In 2013, Assemblymember Chesbro asked FLC and CLFA members to join his Forestry Advisory Committee composed of a diversity of stakeholders convened to consider an extension of the cmTent NTMP process that had been approved in 1989, 24 years earlier. From that Committee, the redrafting of the WFMP took shape throughout numerous Committee meetings, public meetings, and field trips to become AB 904 (Chesbro, 2013). FLC and CLFA members have been involved in every step of the process from concept development, numerous meetings with legislators, staff, and interested parties, hearings in both legislative houses, its signature by Governor Brown, and this rule making process with the Board of Forestry. Members of both organizations have volunteered hundreds, if not thousands, of hours into this effort. This is the most comprehensive forestry bill since the 1973 Z'berg Nejedly Forest Practice Act and has come at the combined effort of landowners and foresters and other interested stakeholders.

Significant input was provided by Cal Fire staff (monitoring provisions), the Water Quality Control Boards (erosion control plan), and the Department of Fish and Wildlife (conservation of both flora and fauna). This input was accepted by most of the stakeholders involved in the process in efforts to balance environmental concerns with the development of a long-term forest management plan that was functional and economically viable.

FLC requests that the Committee and Board retain that balance in the final WFMP regulatory language. Throughout the legislative process there seemed to be broad agreement that the interest of the state would be served by enabling moderately large private timberland landowners to commit to a long term management strategy through the use of a permit such as the WFMP.¹ This benefit to the state will only materialize if the WFMP retains its utility and landowners' interests are served by entering into this permit.

We strongly urge the Board to not stray from the many negotiated items included in AB 904 (Chesbro, 2013). Please understand that FLC and CLFA want this permit to succeed and that we are providing these comments based on input from our members and professionals who have experience in the preparation and supervision of NTMPs, which serve largely as the model for the proposed WFMP.

The regulatory community has requested numerous changes to the proposed WFMP regulations that correct perceived issues with the current NTMP processes, the general model for the WFMP, without taking the time to show environmental deficiencies in the performance of current Forest Practice Rules (FPRs). Our hope and vision has always been that this permit be widely adopted by eligible landowners and not become an unusable addition to FPRs much like the PTHP/PTEIR has proven to be.

Though FLC is supportive of the proposed rule package, we would like to offer the following comments on a few specific outstanding issues we believe would strengthen the utility and protections offered by the WFMP.

5-Year Review

The idea of the 5-year review was brought forward by then Deputy Director Bill Snyder in an attempt to address some of the criticism that the Department receives about NTMPs including issues about over harvesting and the inability to verify changed conditions in the field by public trust agencies. While numerous opportunities currently exist for inspections by agency staff during active operations and the post-harvest maintenance period after Notices of Operations are currently filed, FLC and CLFA agreed to the five year review for the WFMP. This intent of

¹From the conclusions in Nonindustrial Timber Management Plans in California Report to the Legislature by the California Dept. of Forestry and Fire Protection October 2003. Page 10.

The Non-Industrial Timber Management Plan program has become an important timber management tool for qualifying NIPF landowners, and its use is growing each year. In exchange for committing to a long-term program of uneven-aged management and sustained yield, a NTMP offers the benefits of: reduced plan preparation costs for subsequent notices of timber operations...and greater regulatory certainty by committing to -- with some important exceptions -- the Forest Practice Rules that are in place when the NTMP is approved.

... Unfortunately, the 2,500 acre limitation excludes 20 percent of the NIPF area (based on ownership area reported by Birch (1977)). Raising this acreage limitation would increase the number of landowners and area that could utilize NTMPs. For example, increasing the ownership limit to 5,000 acres would make an additional 562,000 acres eligible for NTMPs allowing most of the NIPF acres to be available for the NTMP program. This change would benefit both landowners and the state by providing an opportunity for these additional timberlands to be placed into a sustained yield and uneven-aged management regime.

the review was meant to be primarily a paper review of the administrative record, not an automatic mandatory field review, nor was it intended to open up the approved plan for new review by agencies or the public. The intent of this review was for the Department to convene a meeting with the interdisciplinary review team to verify that operations have been conducted in accordance with the plan and applicable laws and regulations. Public input would be considered by the review team members if it is included in the public record at the time of the review.

The legislative intent on this is clear, verification that operations have been conducted in accordance with the plan and applicable laws and regulations.² In the proposed regulation currently before this board, consideration of potentially significant adverse impacts to the environment that may occur from continuance of the WFMP, as well as the Department being presented with a fair argument that a project may have a significant adverse effect on the environment, goes beyond verification that operations have been conducted in accordance with the plan and applicable laws and regulations. This constitutes a discretionary CEQA review of an approved CEQA document. We are not aware of anything in California statute allowing this to occur. The way that the 5-Year review is currently structured, no WFMP will ever truly be an approved environmental review document.

Comment [WU145]: Comment L18-1 Not cross referenced.

There is currently no deadline for completing the 5-year review process, only that the meeting shall convene within 30 days of each 5-year anniversary and a field inspection, if needed, occur within 60 days of each 5-year anniversary. CLFA suggests, and FLC supports, the addition of language requiring that a final report be provided within 60 days of the 5-year anniversary, or 90 days if a field inspection is needed. This would give the review team at a minimum 30 days from the meeting, or field inspection if necessary, to provide the findings of the review.

Comment [WU146]: Comment L18-2

Active vs. Potential Erosion

Board Member Andre approached Assemblymember Chesbro's consultant in late August of 2013 with the then current language of the Road Rules to discuss a possible modification to Section 4597.2(d) in AB 904. AB 904 uses the term "active erosion" when dealing with the RPF identifying erosion sites while laying out the plan, while the Road Rules also include use the term "potential erosion." Member Andre made his case for standardizing the language of AB 904, however, legislative staff received letters supporting retention of the language in the draft legislation as well as documentation as to why this could be a problem with a plan that be effective for an extended period of time. To identify every "potential erosion site" would be to say that the entire property has the ability at some point in time to erode. As parties involved in the negotiations of bill language, FLC does not believe that is what the Legislature intended. FLC believes that the Legislature intended for a thorough evaluation of the plan area. The WFMP was to address the items that were causing a problem (if any) or had a high likelihood or probability of causing problems in the near future, at the time the plan was submitted, reviewed, and approved. Furthermore, there are several requirements included in the Harvest Notice process which require the RPF/Landowner to notify Cal Fire about significant changes or a lack thereof. These include provisions of (1094.8(h)) requiring, in part, that "based on a field evaluation, there are no physical environmental changes in the Working Forest Harvest Notice area that are so significant as to require any deviation of the WFMP" (emphasis added). The RPF must sign off on this statement subject to provisions of his/her license.

Comment [WU147]: Comment L18-3 Not cross referenced.

Comment [WU148]: Comment L18-3 Can't Not cross referenced.

² See Exhibit B setting forth the language in the various versions of the legislation.

In addition to this issue, which was the legislative intent, there is the issue of community roads. An NTO may only be open for a section of ground each year. Prior to the completion of that area, all erosion control structures must be in place and properly functioning. Imagine if you will a road that has numerous owners up/downhill of the property and has an easement for ingress and egress. The landowner harvests timber, replaces/repairs erosion control structures on their land prior to the completion report being submitted. Now imagine that the road gets damaged by other users of the road during the winter and summer (dust) from a lack of maintenance every subsequent winter. The landowner will never be able to close out the plan as there are always going to be "potential erosion sites." While ultimately a civil matter, the risk of citations or violations by Cal Fire or other public trust agencies increases the likelihood of the plan not being utilized. This is one of the problems with the Road Rules with which we tried to point out during their creation: they often don't work well for NTMPs and WFMPs as they are long-term documents in contrast to the maximum seven-year life for a THP. If an NTO can't be closed out, then future Notices are limited or prohibited, thus making the WFMP null and void. The WFMP was created by the stakeholders, negotiated with the state agencies, and ultimately had approval from the Legislature as a positive step forward for forest management in California. FLC does not believe that it is within this Board's authority to alter legislative language without documentation of legislative intent or identification of actual problems.

Comment [WU149]: Comment L18-3 Con't

15380 Species

There are two issues with regard to species listed under CEQA as 15380(d). In the legislative language of AB 904, it is very clear that 15380(d) species be discussed in only the notices of each operation. The Management Committee, at the behest of DFW, has decided that 15380(d) species should be discussed within the body of the WFMP. This again would change something which was done intentionally by the Legislature.

Comment [WU150]: Comment L18-4

Section §15380 appears only one time in statute, PRC 4597.11 (f), the Working Forest Harvest Notice (Notice). This was done because these species may move, die or otherwise vacate a site, so the Legislature decided that the appropriate time to deal with species that aren't currently listed as endangered or threatened is at the time a Working Forest Notice is submitted to Cal Fire.

PRC 4597.2(h) limits disclosures of take avoidance methodologies, enforceable protection measures, habitats, and how management will maintain those habitats over time for state or federally listed threatened, candidate, or rare plant or animal species. There is no language in this section that would imply that similar disclosures were intended to extend to non-listed species.

Comment [WU151]: Comment L18-5

Conservation of biological resources is of great importance to the success of the WFMP. The WFMP is a long-term management plan potentially covering from 2,500 to 14,999 acres where timber operations may not occur on some of those acres for many long periods of time, ensuring the conservation of biological resources creates unique challenges. Listed and sensitive wildlife and plant species move with time. Disclosure of their locations in the WFMP itself provides a snapshot in time but does little to ensure the long-term conservation of the species. This can only be achieved through targeted field investigations in connection with Harvest Notices. The Legislature understood this in tying the requirement to disclose new locations of listed and sensitive species as amendments to the plan prior to filing each Notice. Demonstration of take avoidance for state and federally listed species is required; it is not required for species

qualifying for consideration under 15380(d). FLC believes the legislative intent was to avoid a requirement for inclusion of information in the WFMP that accomplishes little or nothing that would conserve these species until operations are imminent. In the interest of efficiency and ensured conservation of the species, the Legislature chose instead to rely on field evaluations conducted prior to submission of Notices.

The specific problem arises in 1094.6(n)(1) **Contents of WFMP**. As currently worded the plan must address state or federally listed threatened, candidate, and endangered species; rare plants; Sensitive Species pursuant to 14 CCR § 895.1; and species that meet the criteria under 14 CCR § 15380(d), that timber operations could potentially impact through potential adverse changes to habitat. 14 CCR § 15380(d) is found under Chapter 3 of the Guidelines for Implementation of the California Environmental Quality Act: thus, any consideration of species qualifying for consideration under 14 CCR § 15380(d) is bound by the limitations of CEQA. In order to address these species, the RPF would be forced to speculate about the timing of harvest, speculate regarding stand conditions at the time of harvest, and speculate as to whether a species is present or absent at the time of harvest. 14 CCR § 15187 Environmental Review of New Rules and Regulations instructs that environmental analysis should not engage in speculation or conjecture. It would be inappropriate for this Board to force RPFs to engage in speculation as it relates to species qualifying for considerations under 14 CCR § 15380(d).

Comment [WU152]: Comment L18-6 Not cross referenced.

Section 1094.8(g) and section 1094.8(g)(2) requires the RPF to amend the WFMP disclosing new locations of all plant and animal species which are listed as rare, threatened, endangered or that meet the requirements for 15380 listed species "within and adjacent to the logging area". There is no guidance on what constitutes "adjacent". FLC would suggest consideration that a distance of 100 feet from the Harvest Notice perimeter be utilized for the provisions of these sections as this would be consistent with the distance from appurtenant roads that are considered to be part of the logging area.

Comment [WU153]: Comment L18-7 Not cross referenced.

CLFA in its comment letter dated February 26, 2015 addressed several administrative and technical issues that should be resolved to make the proposed regulatory process more efficient. FLC briefly restates these below and supports the changes suggested by CLFA.

Landowner vs. Plan Submitter vs. Designated Agent vs. RPF

There are numerous instances where the responsibility falls on one individual or another, but there are some areas that need some substantial cleanup before this rule package should go forward as there are some serious inconsistencies.

An example of this can be found in § 1094.31

"Cancellation of the plan may be appealed by the plan submitter(s) or landowner(s) the Designated Agent utilizing the process pursuant to PRC § 4597.6(e)(1) and 14 CCR 1094.17(e)."

The plan submitter and the landowner(s) agent may be able to appeal the cancellation of a WFMP, but the landowner themselves can't. Given the seriousness of a WFMP cancellation, the landowner(s) should have direct standing to appeal the cancellation.

Comment [WU154]: Comment L18-8

14 CCR 1094.10(c) requires an amendment identifying a Designated Agent at least five (5) days prior to filing the first Working Forest Notice. This should only be a requirement if the landowners' Designated Agent is different than that in the contents of the WFMP and not amended for every Notice

Comment [WU155]: Comment L18-9

Logging Roads vs. Roads

Throughout the current language of the WFMP, there are various uses and inferences to roads and logging roads. We would suggest that the current language be cleaned up to clearly discuss logging roads as not all roads are used for logging purposes.

Page 15 line 24

Page 17 line 18

Page 21 line 11

Page 21 line 19

Page 41 line 21

Comment [WU156]: Comment L18-10

§1094.14 Notification of Commencement of Operations

Add e-mail notification as this has become the standard acceptable practice for communications between RPFs and the Department.

Comment [WU157]: Comment L18-11

§1094.19 Nonconformance of WFMP

This language is redundant to 1094.1?(c). We suggest 1094.19 be struck, and the language of 1094.19 replace the intent language in 1094.1?(c).

Comment [WU158]: Comment L18-12 Not cross referenced.

§1094.6 Contents of WFMP (Growth and Yield)

As currently written, items which pertain specifically to growth and yield appear seven times within 1094.6, spanning six unique sections. More specifically, (f)(3), (g) & (g)(3), (h)(1), (m)(1), (n), and (p)(1). While growth and yield is an indisputably important facet of the WFMP, consolidation of these references to fewer sections or one section may serve to better guide the RPF in development of the document, and aid in plan review.

Comment [WU159]: Comment L18-13

Review of Newly Developed Forms

As new forms are developed for the WFMP, we ask that the review of these forms be public so the landowner and RPF community is able to review and comment on the content.

Comment [WU160]: Comment L18-14

§1094.11 -- RPF Responsibilities

Currently, the FPRs contain three separate configurations of Registered Professional Foresters Responsibilities in 1035.1, 1090.10 and 1092.12. The addition of the RPF Responsibilities for the WFMP would create a total of four iterations. Please complete a thorough analysis of RPF Responsibilities to insure all needed responsibilities are captured and insure consistency across the current range of responsibilities.

Comment [WU161]: Comment L18-15

1094.11(b)(1): Add e-mail notification as this has become the standard acceptable practice for communications between RPFs and the Department.

Comment [WU162]: Comment L18-16

Add "All disclosures made between and RPF and an affected party pursuant to this section may be kept confidential", in order to be consistent with both 1092.12(f) and 1035.1(d).

Comment [WU163]: Comment L18-17

Thank you for considering these comments for incorporation into the WFMP rule plead.

Sincerely,



Lawrence D. Camp
President
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RPF No. 1698



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Exhibit A

Excerpts from AB 904 § 4597.12 regarding the 5 Year Review

4597.12. Statute as chaptered 10-08-13 5 Year Review

4597.12(a) For an approved working forest management plan, the director shall convene a meeting with the interdisciplinary review team, as that term is used in subdivision (a) of Section 1037.5 of Title 14 of the California Code of Regulations, every five years to review the plan's administrative record, information obtained pursuant to subdivision (b), and any other information relevant to verify that operations have been conducted in accordance with the plan and applicable laws and regulations. Participation by review team agencies shall be at the discretion of each agency. If at this meeting a member of the review team determines that a field inspection is necessary to verify that operations have been conducted in accordance with the plan and applicable laws and regulations, then a field inspection may be conducted.

(b) For the purposes of subdivision (a), the board, in consultation with the review team agencies, shall adopt regulations that require the department to develop a plan summary before each five-year review that allows the review team to analyze information including, but not limited to, the number of notices of timber operations, the acreage operated under each notice, the violations received, and the volume harvested in relation to projections of harvest in the plan. If the department or a review team agency does not have direct access to information needed for the plan summary, the department may require the landowner to provide this information.

(c) For the purpose of allowing the public to monitor a working forest management plan, the department shall provide the public, in writing or on its Internet Web site, notice of each five-year review and a copy of the plan summary. The public may submit to the review team additional information relevant to the purpose of the five-year review and the review team may consider this information when conducting its review.

(d) This section does not authorize the public disclosure of proprietary information without first obtaining the landowner's consent.

As introduced 2-22-13

4597.12. (a) For an approved working forest management plan, the director shall convene a meeting with the interdisciplinary review team, as that term is used in subdivision (a) of Section 1037.5 of Title 14 of the California Code of Regulations, every five years to review the plan's administrative record, information obtained pursuant to subdivision (b), and any other information relevant to verify that operations have been conducted in accordance with the plan and applicable laws and regulations. Participation by review team agencies shall be at the

discretion of each agency. If at this meeting a member of the review team determines that a field inspection is necessary to verify that operations have been conducted in accordance with the plan and applicable laws and regulations, then a field inspection may be conducted.

(b) For the purposes of subdivision (a), the board, in consultation with the review team agencies, shall adopt regulations that require the department to develop a plan summary before each five-year review that allows the review team to analyze information including, but not limited to, the number of notices of timber operations, the acreage operated under each notice, the violations received, and the volume harvested in relation to projections of harvest in the plan. If the department or a review team agency does not have direct access to information needed for the plan summary, the department may require the landowner to provide this information.

(c) For the purpose of allowing the public to monitor a working forest management plan, the department shall provide the public, in writing or on its Internet Web site, notice of each five-year review and a copy of the plan summary. The public may submit to the review team additional information relevant to the purpose of the five-year review and the review team may consider this information when conducting its review.

(d) This section does not authorize the public disclosure of proprietary information without first obtaining the landowner's consent.

As amended in the Assembly 3-21-13

4597.12.(a) For an approved working forest management plan, the director shall convene a meeting with the interdisciplinary review team, as that term is used in subdivision (a) of Section 1037.5 of Title 14 of the California Code of Regulations, every five years to review the plan's administrative record, information obtained pursuant to subdivision (b), and any other information relevant to verify that operations have been conducted in accordance with the plan and applicable laws and regulations. Participation by review team agencies shall be at the discretion of each agency. If at this meeting a member of the review team determines that a field inspection is necessary to verify that operations have been conducted in accordance with the plan and applicable laws and regulations, then a field inspection may be conducted.

(b) For the purposes of subdivision (a), the board, in consultation with the review team agencies, shall adopt regulations that require the department to develop a plan summary before each five-year review that allows the review team to analyze information including, but not limited to, the number of notices of timber operations, the acreage operated under each notice, the violations received, and the volume harvested in relation to projections of harvest in the plan. If the department or a review team agency does not have direct access to information needed for the plan summary, the department may require the landowner to provide this information.

(c) For the purpose of allowing the public to monitor a working forest management plan, the department shall provide the public, in writing or on its Internet Web site, notice of each five-year review and a copy of the plan summary. The public may submit to the review team additional information relevant to the purpose of the five-year review and the review team may consider this information when conducting its review.

(d) This section does not authorize the public disclosure of proprietary information without first obtaining the landowner's consent.

As amended in the Assembly 4-22-13

4597.12.(a) For an approved working forest management plan, the director shall convene a meeting with the interdisciplinary review team, as that term is used in *subdivision (a) of* Section 1037.5 of Title 14 of the California Code of Regulations, every five years to review the plan's administrative ~~record~~ *record, information obtained pursuant to subdivision (b)*, and any other information relevant to ~~the plan.~~ *verify that operations have been conducted in accordance with the plan and applicable laws and regulations. Participation by review team agencies shall be at the discretion of each agency.* If at this meeting a member of the review team determines that a field ~~review inspection~~ is necessary to verify ~~the plan's compliance with the appropriate rules and regulations,~~ *that operations have been conducted in accordance with the plan and applicable laws and regulations,* then a field ~~review inspection~~ may be conducted.

(b) For the purposes of subdivision (a), the board, in consultation with the review team agencies, shall adopt regulations that require the department to develop a plan summary before each five-year review that allows the review team to analyze information including, but not limited to, the number of notices of timber operations, the acreage operated under each notice, the violations received, and the volume harvested in relation to projections of harvest in the plan. If the department or a review team agency does not have direct access to information needed for the plan summary, the department may require the landowner to provide this information.

(c) For the purpose of allowing the public to monitor a working forest management plan, the department shall provide the public, in writing or on its Internet Web site, notice of each five-year review and a copy of the plan summary. The public may submit to the review team additional information relevant to the purpose of the five-year review and the review team may consider this information when conducting its review.

(d) This section does not authorize the public disclosure of proprietary information without first obtaining the landowner's consent.

As amended in the Assembly 6-19-13

4597.12.(a) For an approved working forest management plan, the director shall convene a meeting with the interdisciplinary review team, as that term is used in *subdivision (a) of* Section 1037.5 of Title 14 of the California Code of Regulations, every five years to review the plan's administrative ~~record~~ *record, information obtained pursuant to subdivision (b)*, and any other information relevant to ~~the plan.~~ *verify that operations have been conducted in accordance with the plan and applicable laws and regulations.* Participation by review team agencies shall be at the discretion of each agency. If at this meeting a member of the review team determines that a field inspection is necessary to verify ~~the plan's compliance with the appropriate rules and that operations have been conducted in accordance with the plan and applicable laws and regulations,~~ then a field inspection may be conducted.

(b) For the purposes of subdivision (a), the board, in consultation with the review team agencies, shall adopt regulations that require the department to develop a plan summary before each five-year review that allows the review team to analyze information including, but not limited to, the number of notices of timber operations, the acreage operated under each notice, the violations

received, and the volume harvested in relation to projections of harvest in the plan. ((the department or a review team agency does not have direct access to information needed for the plan summary, the department may require the landowner to provide this information.

(c) For the purpose of allowing the public to monitor a working forest management plan, the department shall provide the public, in writing or on its Internet Web site, notice of each five-year review and a copy of the plan summary. The public may submit to the review team additional information relevant to the purpose of the five-year review and the review team may consider this information when conducting its review.

(d) This section does not authorize the public disclosure of proprietary information without first obtaining the landowner's consent.

As amended in the Senate 8-13-13

4597.12. (a) For an approved working forest management plan, the director shall convene a meeting with the interdisciplinary review team, as that term is used in subdivision (a) of Section 1037.5 of Title 14 of the California Code of Regulations, every five years to review the plan's administrative record, information obtained pursuant to subdivision (b), and any other information relevant to verify that operations have been conducted in accordance with the plan and applicable laws and regulations. Participation by review team agencies shall be at the discretion of each agency. If at this meeting a member of the review team determines that a field inspection is necessary to verify that operations have been conducted in accordance with the plan and applicable laws and regulations, then a field inspection may be conducted.

(b) For the purposes of subdivision (a), the board, in consultation with the review team agencies, shall adopt regulations that require the department to develop a plan summary before each five-year review that allows the review team to analyze information including, but not limited to, the number of notices of timber operations, the acreage operated under each notice, the violations received, and the volume harvested in relation to projections of harvest in the plan. If the department or a review team agency does not have direct access to information needed for the plan summary, the department may require the landowner to provide this information.

(c) For the purpose of allowing the public to monitor a working forest management plan, the department shall provide the public, in writing or on its Internet Web site, notice of each five-year review and a copy of the plan summary. The public may submit to the review team additional information relevant to the purpose of the five-year review and the review team may consider this information when conducting its review.

(d) This section does not authorize the public disclosure of proprietary information without first obtaining the landowner's consent.

As amended in the Senate 9-3-13

4597.12.(a) For an approved working forest management plan, the director shall convene a meeting with the interdisciplinary review team, as that term is used in subdivision (a) of Section 1037.5 of Title 14 of the California Code of Regulations, every five years to review the plan's administrative record, information obtained pursuant to subdivision (b), and any other information relevant to verify that operations have been conducted in accordance with the plan and applicable laws and regulations. Participation by review team agencies shall be at the discretion of each agency. If at this meeting a member of the review team determines that a field inspection is necessary to verify that operations have been conducted in accordance with the plan and applicable laws and regulations, then a field inspection may be conducted.

(b) For the purposes of subdivision (a), the board, in consultation with the review team agencies, shall adopt regulations that require the department to develop a plan summary before each five-year review that allows the review team to analyze information including, but not limited to, the number of notices of timber operations, the acreage operated under each notice, the violations received, and the volume harvested in relation to projections of harvest in the plan. If the department or a review team agency does not have direct access to information needed for the plan summary, the department may require the landowner to provide this information.

(c) For the purpose of allowing the public to monitor a working forest management plan, the department shall provide the public, in writing or on its Internet Web site, notice of each five-year review and a copy of the plan summary. The public may submit to the review team additional information relevant to the purpose of the five-year review and the review team may consider this information when conducting its review.

(d) This section does not authorize the public disclosure of proprietary information without first obtaining the landowner's consent.

As enrolled on 9-12-13

4597.12.(a) For an approved working forest management plan, the director shall convene a meeting with the interdisciplinary review team, as that term is used in subdivision (a) of Section 1037.5 of Title 14 of the California Code of Regulations, every five years to review the plan's administrative record, information obtained pursuant to subdivision (b), and any other information relevant to verify that operations have been conducted in accordance with the plan and applicable laws and regulations. Participation by review team agencies shall be at the discretion of each agency. If at this meeting a member of the review team determines that a field inspection is necessary to verify that operations have been conducted in accordance with the plan and applicable laws and regulations, then a field inspection may be conducted.

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(d) This section does not authorize the public disclosure of proprietary information without first obtaining the landowner's consent.



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Exhibit B

Excerpts from AB 904 § 4597.2 regarding the Erosions Control Plan

Statute as chaptered 10-08-13 Erosion Control Plan (regarding potential)

4597.2(d) A description and discussion of the methods to be used to avoid significant sediment discharge to watercourses from timber operations. This shall include disclosure of active erosion sites from roads, skid trails, crossings, or any other structures or sites that have the potential to discharge sediment attributable to timber operations into waters of the state in an amount deleterious to the beneficial uses of water, an erosion control implementation plan, and a schedule to implement erosion controls that prioritizes major sources of erosion. This subdivision shall not apply to the extent that the registered professional forester provides documentation to the department that the working forest management plan is in compliance with similar requirements of other applicable provisions of law.

As introduced 2/22/13

4597.2(d) A description and discussion of the methods to be used to avoid significant sediment discharge to watercourses from timber operations. This shall include disclosure of active erosion sites from roads, skid trails, crossings, or any other structures or sites that have the potential to discharge sediment attributable to timber operations into waters of the state in an amount deleterious to the beneficial uses of water, an erosion control implementation plan, and a schedule to implement erosion controls that prioritizes major sources of erosion. This subdivision shall not apply to the extent that the registered professional forester provides documentation to the department that the working forest management plan is in compliance with similar requirements of other applicable provisions of law.

As amended in the Assembly 3-21-13

4597.2 (d) A description and discussion of the methods to be used to avoid significant sediment discharge to watercourses from timber operations. This shall include disclosure of active erosion sites from roads, skid trails, crossings, or any other structures or sites that have the potential to discharge sediment attributable to timber operations into waters of the state in an amount deleterious to the beneficial uses of water, an erosion control implementation plan, and a schedule to implement erosion controls that prioritizes major sources of erosion. This subdivision shall not apply to the extent that the registered professional forester provides documentation to the department that the working forest management plan is in compliance with similar requirements of other applicable provisions of law.

As amended in the Assembly 4-22-13

4597.2 (d) A description and discussion of the methods to be used to avoid significant sediment discharge to watercourses from timber operations. This shall include disclosure of **erosion sites**, *active erosion sites from roads, skid trails, crossings, or any other structures or sites that have the potential to discharge sediment attributable to timber operations into waters of the state in an amount deleterious to the beneficial uses of water*, an erosion control implementation plan, and an erosion control implementation schedule. To avoid duplicative work, this subdivision does plan, and a schedule to implement erosion controls that prioritizes major sources of erosion. This subdivision shall not apply to the extent that the **working forest landowner does both of the following**: *registered professional forester provides documentation to the department that the working forest management plan is in compliance with similar requirements of other applicable provisions of law.*

- (1) Is complying with substantially similar requirements in existing law.
- (2) Submits information to the department that details how they are complying with existing law.

As amended in the Senate 6-19-13

4597.2(d) A description and discussion of the methods to be used to avoid significant sediment discharge to watercourses from timber operations. This shall include disclosure of **erosion sites**, *active erosion sites from roads, skid trails, crossings, or any other structures or sites that have the potential to discharge sediment attributable to timber operations into waters of the state in an amount deleterious to the beneficial uses of water*, an erosion control implementation plan, and an erosion control implementation schedule. To avoid duplicative work, this subdivision does plan, and a schedule to implement erosion controls that prioritizes major sources of erosion. This subdivision shall not apply to the extent that the **working forest landowner does both of the following**: *registered professional forester provides documentation to the department that the working forest management plan is in compliance with similar requirements of other applicable provisions of law.*

- (1) Is complying with substantially similar requirements in existing law.
- (2) Submits information to the department that details how they are complying with existing law.

As amended in the Senate 8-13-13

4597.2(d) A description and discussion of the methods to be used to avoid significant sediment discharge to watercourses from timber operations. This shall include disclosure of active erosion sites from roads, skid trails, crossings, or any other structures or sites that have the potential to discharge sediment attributable to timber operations into waters of the state in an amount deleterious to the beneficial uses of water, an erosion control implementation plan, and a schedule to implement erosion controls that prioritizes major sources of erosion. This subdivision shall not apply to the extent that the registered professional forester provides documentation to the department that the working forest management plan is in compliance with similar requirements of other applicable provisions of law.

As amended in the Senate 9-3-13

4597.2(d) A description and discussion of the methods to be used to avoid significant sediment discharge to watercourses from timber operations. This shall include disclosure of active erosion sites from roads, skid trails, crossings, or any other structures or sites that have the potential to discharge sediment attributable to timber operations into waters of the state in an amount deleterious to the beneficial uses of water, an erosion control implementation plan, and a schedule to implement erosion controls that prioritizes major sources of erosion. This subdivision shall not apply to the extent that the registered professional forester provides documentation to the department that the working forest management plan is in compliance with similar requirements of other applicable provisions of law.

As enrolled on 9-12-13

4597.2(d) A description and discussion of the methods to be used to avoid significant sediment discharge to watercourses from timber operations. This shall include disclosure of active erosion sites from roads, skid trails, crossings, or any other structures or sites that have the potential to discharge sediment attributable to timber operations into waters of the state in an amount deleterious to the beneficial uses of water, an erosion control implementation plan, and a schedule to implement erosion controls that prioritizes major sources of erosion. This subdivision shall not apply to the extent that the registered professional forester provides documentation to the department that the working forest management plan is in compliance with similar requirements of other applicable provisions of law.